



Registered TM 1227576

Dean R. Love & Associates

Barristers & Solicitors
DRL Legal Pty Ltd (ACN 123 034 846)

FAMILY LAW – CIVIL LAW – CRIMINAL LAW

ABN 34 123 034 846

Perth Office:
1st Floor, 231 Adelaide Terrace
PERTH WA 6000

Postal:
PO Box 3263
PERTH WA 6832

Tel: (08) 9218 9993
Fx: (08) 9218 9557
enquiries@drlegal.com.au
www.drlegal.com.au

PROPERTY SETTLEMENT – WHAT AM I ENTITLED TO?

We are often asked by people in your situation “How much am I entitled to?”

This is a difficult question to answer because it depends on so many variables.

The correct answer is only the Family Court can tell you what you are “entitled” to, and only after they have heard all of the evidence presented by both parties.

We cannot tell you what you are “entitled” to we can only suggest a “reasonable settlement offer” for you to put forward to your spouse, which your spouse may in turn accept or reject.

In deciding what is a “reasonable settlement offer” we would try to follow the same approach the Family Court would follow if the matter went to Court.

We have enclosed for your assistance, a flow diagram demonstrating that approach.

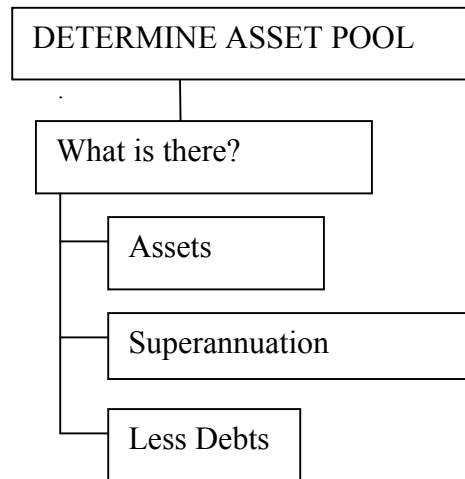
In preparing a “reasonable settlement offer” we would need from you any financial documents, and any other evidence, that is relevant to Section 79(4) and Section 75(2) of the *Family Law Act*.

We have also enclosed a memorandum which sets out these two Sections so that you can see all of the different issues that they raise, and why we request so much information.

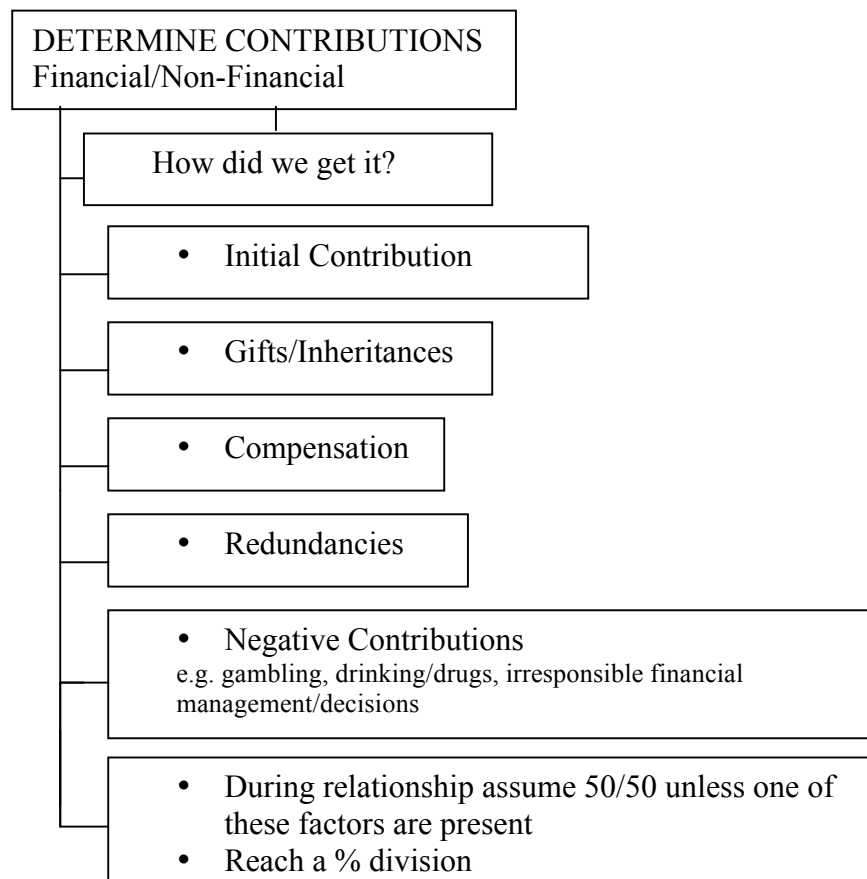
We hope that this leaves you better informed about how the property settlement process works in the Family Court.

FINANCIAL PROPERTY SETTLEMENT

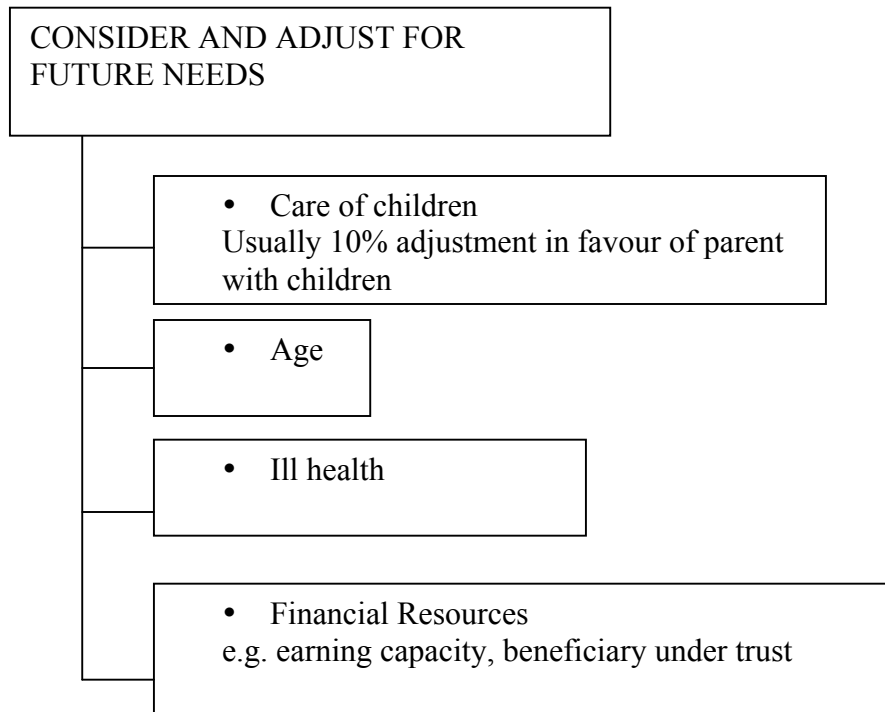
1.



2.



3.



4.

IS IT JUST AND FAIR

THE FAMILY COURT OF WA: APPROACH TO MATRIMONIAL PROPERTY MATTERS

The Family Court of Western Australia requires me to give clients certain advice in relation to the legal principles applicable to property settlement. This advice is set out below for your information:

The four important steps to determine a Property Application

Section 79 of the *Family Law Act 1975* enables the Court exercising jurisdiction under the Act to alter interests in property as between the parties to a marriage.

The approach taken in an s 79 Application is a four-step process. The four steps are:

- (1) Identify and value the net property of the parties;
- (2) Consider the contributions of the parties within paragraphs (a) to (c) of s79(4);

- (3) Consider the s 75(2) factors (s79(4) (d) - (g); *and*
- (4) Consider whether the order proposed is just and equitable (s79(2)).

Step 1: Identify the value of the Matrimonial Asset Pool

The first step is to ascertain the value of the joint matrimonial asset pool, that is, all assets and liabilities of the parties, including any financial resources such as superannuation (although this can sometimes be treated differently by the Family Court in de facto relationships).

All assets and liabilities of both parties should be included at this first stage. The matter of who has made what contribution to those assets & liabilities, is considered at Step 2.

Step 2: Financial & Non Financial Contributions s79(4)

The next step is to consider what the respective parties have contributed to the matrimonial asset pool, in terms of both their financial and non financial contributions.

The relevant considerations to be taken into account when making an Order under s79(1) are set out in s79(4) which provides:

“In considering what order should be made in proceedings with respect to the property of a marriage, the Court shall take into account:

- (a) The financial contribution made directly or indirectly by the acquisition, conservation or improvement of any of the property of the parties to the marriage;
- (b) The contribution indirectly to the acquisition, conservation or improvement of any of the property of the parties to the marriage, whether or not that property has, since making of the contribution ceased to be the property of the parties to the marriage;
- (c) The contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of the homemaker or parent;
- (d) The effect of any proposed order upon the earning capacity of either party to the marriage;
- (e) The matters referred to in sub-section 75(2) so far as they are relevant;
- (f) Any other order made under this Act affecting a party to the marriage or a child of the marriage; *and*

- (g) Any child support under *the Child Support (Assessment) Act 1989* “that a party to the marriage has provided, is to provide or might be liable to provide in the future, for a child of the marriage.”

Step 3: Adjustments for Personal Factors s75 (2)

The next step that the Family Court will undertake, is to make certain adjustments for the personal factors of each party.

It can be seen that one of the considerations listed under 279(4)(e) are the matters referred to in s75(2) so far as they are relevant. The matters listed in s 75(2) are:

- (a) the age and health of each of the parties;
- (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- (c) whether either party has the care or control of a child of the marriage who has not attained the age of 18 years;
- (d) commitments of each of the parties that are necessary to enable the party to support:
 - (i) himself or herself;
 - (ii) a child or another person that the party has a duty to maintain.
- (e) the responsibilities of either party to support any other person;
- (f) subject to sub-section (3) the eligibility of either party for a pension allowance or benefit under
 - (i) any law of the Commonwealth, of a State or Territory or of another country; *or*
 - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia.
- (g) where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable;
- (h) the extent to which the payment of maintenance to the party whose maintenance is under construction would increase the earning capacity of the party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- (i) the effect of any proposed order on the ability of a creditor of a party to recover the creditor’s debt, so far as that effect is relevant;

- (j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;
- (k) the duration of the marriage and the extent to which it has affected the earnings capacity of the party whose maintenance is under consideration;
- (l) the need to protect a party whose wishes to continue that party's role as a parent;
- (m) if either party is cohabiting with another person - the financial circumstances relating to the cohabitation;
- (n) the terms of any order made or proposed to be made under section 79 in relation to the property of the parties;
- (o) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide or might be liable to provide in the future for a child of the marriage;
- (p) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; *and*
- (q) the terms of any financial agreement that is binding on the parties."

Step 4: Is the Order 'Just & Equitable'

Finally, the last step provided for in Section 79(2) which requires that:

"The Court shall not make an Order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order."

In other words, the Family Court takes an overall view of what Order is to be made, and then decides whether, in all of the circumstances, it is a fair one.