



# PROPERTY SETTLEMENT - WHAT THE COURT TAKES INTO ACCOUNT

## The Family Law Act puts in place a four or five stage process

### **1. What property is there and how much is it worth?**

Values of all property and financial resources need to be obtained. Usually the property and its value can be determined quite easily but in some cases this can prove difficult. Remember superannuation is now included as property.

### **2. What have the contributions of the parties been?**

These are both financial and non-financial. These may include paid employment, homemaking duties (including caring for the children), inheritances, workers compensation payments and the like.

The period of contribution is usually from the date of cohabitation to the date of hearing, but each case is different. This is covered in Section 79 of the Family Law Act.

### **3. Does there need to be a financial adjustment?**

Section 75(2) of the Family Law Act provides for financial adjustments to occur on property settlement so that one party might receive greater or lesser than their contribution. This process is sometimes called “future factors” or “needs factors”. It is often because of this section that there is not an equal division of property. This is because it is felt necessary to compensate the party with greater need by giving that party a greater share of the property. The matters taken into account include:-

- the age and state of health of each party;
- the income, property and financial resources of each party;
- the physical and mental capacity of each party for appropriate gainful employment;
- whether either party has the care or control of a child of the marriage under 18 years;
- a standard of living that in all the circumstances is reasonable;
- whether one party needs to undertake some training to obtain employment;
- the duration of the marriage and the extent to which it has affected the earning capacity of the party seeking maintenance;
- the need to protect a party who wishes to continue that party’s role as a parent;
- if either party is cohabiting with another person;
- the financial circumstances relating to that;
- any child support paid or payable;
- any fact or circumstances which the justice of the case requires to be taken into account (this can include evidence of gambling, drinking and domestic violence)

### **4. Coming up with a fair result.**

Section 79(2) of the Family Law Act says that the result must be just and equitable.



### **5. Spousal Maintenance.**

One party may be obliged to maintain the other financially. This could be a periodic sum such as '\$x' per week or a lump sum or portion of the property in addition to property settlement. Many of the factors considered are those relating to needs. Usually the Family Court does not order final spousal maintenance in addition to property settlement.



## **Additional Matters**

### ***Full and frank disclosure of Financial Circumstances***

Both parties have to do this! If you aren't totally honest, you may have to pay in more ways than one for your lack of openness.

### ***Child Support***

Sometimes the Court might order lump sum or periodic child support in addition to property settlement.

### ***Costs***

Usually each party bears their own costs and this may be substantial. If offers are made (or there is some other factor of the particular case), costs orders may be made against one party to pay the other party's costs. This may be several thousand dollars.

### ***Time Limit***

An application to the Court for property settlement or spousal maintenance ***must be made within 1 year*** of divorce unless the Court gives permission to apply after that time.

### ***Domestic Violence***

The Family Court can in addition to other powers, award damages for assaults, nervous shock and similar actions caused by domestic violence. These amounts may be substantial and may be in addition to property settlement although it may be very difficult to bring the matter to Court or to defend it.

### ***De Facto Relationships***

The law is similar for some disputes. The Property Law Act (a Queensland Act as opposed to the Family Law Act which is a Commonwealth Act) takes an almost identical approach to the Family Law Act for steps 1 to 4 above, although step 5 DOES NOT APPLY.

However, if the parties resided outside Queensland or had property outside Queensland then interstate laws (different to Queensland laws) may apply. Generally, superannuation cannot be split. The courts hearing such a claim are the Supreme, District or Magistrates Courts, ***not*** the Family.





## BENNETT CARROLL

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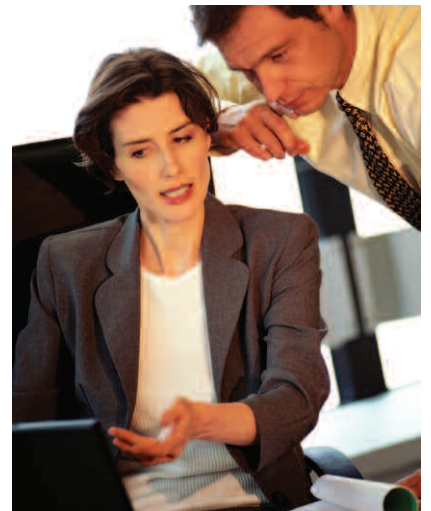
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***The solicitors in our family law section are Warren Tegg, Kate Murphy and Joanne Bennett***



### Warren Tegg

Warren was admitted to practice as a Solicitor of the Supreme Court of Queensland and the High Court of Australia in 1979. He ran his own legal practice specialising in Family Law and Business Advice from 1980 until 2001 before merging with Bennett Carroll. Warren has been helping people with their Family Law problems since the inception of the Family Law Act in 1976.

Warren is Department Head with the Family Law division of Bennett Carroll. He brings to the department a wealth of experience that includes some five years running his own call centre for people with Family Law problems, as well as acting as a sessional mediator with Relationships Australia Queensland from 1989 to 1994. He is also the General Manager of the Master Guidance Company, which is a counselling service owned by Bennett Carroll.

Warren has served on a number of Queensland Law Society committees during his career and is currently a member the Small Practice Management division where he has been called upon to speak at State conferences on legal practice.



### Kate Murphy

Originally from Northern NSW, Kate studied at Queensland University of Technology graduating in 2005 with a Bachelor of Laws and a Bachelor of Business. She has a strong interest in Family Law, which extends to international law relating to marriage and children.

Kate was admitted to the Supreme Court of Queensland in 2006 and the High Court of Australia in 2007. Kate has over 4 years extensive experience in Family Law, as well as engaging in Criminal and Commercial Law. Kate has also had the benefit of being trained with Pauline Tesler, with a strong focus on negotiation.

Kate is a member of the Queensland young lawyers association.

### Joanne Bennett

Joanne graduated from Deakin University before completing her Professional Legal Training at Bond University in 2003 and was admitted in December that year.

Joanne is an experienced family lawyer and can offer professional assistance and guidance in all types of family law matters including those involving children and financial issues, de facto relationships, pre-nuptials and parental orders.

Joanne also has extensive Commercial Law experience in vital areas such as property, company structures, franchise agreements, joint venture agreements and leases.

***Family law is a very complex and emotional area of law; it will involve your whole family. This is why when things go wrong, you need an experienced team of friendly lawyers who are compassionate professionals with real life experience who understand your problems.***



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