



FAMILY
RELATIONSHIP CENTRE
HELPING FAMILIES BUILD BETTER RELATIONSHIPS



An Australian Government Initiative

Ringwood FRC
Finance and Property Information Session
www.ringwoodfrc.org.au

each

Acknowledgement of Country

On behalf of all those present, we would like to acknowledge the Custodians and Traditional Owners of the Land on which we meet.

It is upon their ancestral lands that we meet today and we pay our respect to any Aboriginal or Torres Strait Islander Community members with us today; their Elders, past, present and emerging.



Welcome to your Finance and Property information session.

Disclaimer:

The following information is not, and should not be considered legal advice, but only general information.

Independent legal advice is strongly encouraged throughout this process.

The “Clean Break” Principle

- The ‘Clean Break’ principle is that divorced or separated couples should settle their financial affairs so any joint financial relations are finalised
- When people separate they need to make decisions about how to next divide their joint assets and liabilities/debts

This includes couples who:

- Are still married but not yet divorced
- Who are divorced, and
- Those who have been in a de facto relationship

When should we divide our property?

Except in special circumstances **there are time restrictions** for applying to the Federal Circuit and Family Court of Australia in formalising a legally binding and enforceable, financial and property settlement:

- a) For **Married** couples:
From the date of a Divorce, parties have 12 months to make an application to the Court
- b) For **De Facto** couples:
From the date of separation, parties have 2 years to make an application to the Court

However, there are some exceptions...

Once the time limit passes, you may need permission from the Court before you can make an application for property settlement.

When should we divide our property? (Continued)

- Parties do not have to be divorced or living in separate locations, before they divide their property
- It helps if both people are over the worst of the disruption associated with separation, that arrangements have been made about caring for children, and each of you have some idea of their future plans
- At the **Ringwood Family Relationship Centre** if there are children's matters to be discussed:
 - We would normally support parents to negotiate children's matters prior to Finance and Property negotiations
This can be a short term arrangement that allows for your children and yourselves to have clarity of their arrangements while you then negotiate your property and finance settlement
 - Exceptions do exist for prioritising Finance and Property matters

Agreeing on Finance and Property Matters

- Many separating couples agree on how to divide their property and finances without going through the Family Courts
- If appropriate, agreeing on property division without disputing the issues in court, such as in a mediation setting, can save families the emotional and financial costs associated with court involvement and can give greater autonomy over how property is divided
- Resolving issues through mediation rather than Court involvement can result in healthier post-separation parenting relationships for couples with children

However, for some situations a legal process is the best option.

Family Dispute Resolution (FDR)

- The 'next step' if you can't agree

- **The Family Law Regulations require parties to genuinely try to resolve their dispute before starting a proceeding with the Court. Whilst no Certificate is produced for this attempt, our service can provide a letter of attendance/non attendance.**
- **FDR can provide:**
 - Clarification of assets and liabilities for discussion
 - A documented list of property assets & liabilities (i.e. superannuation, contributions and future needs) as taken into consideration by Family Law Act
 - An opportunity for discussions about parties non-financial and financial (direct and indirect) contributions and future needs
 - An opportunity for each party to put forward proposals and clarify their positions around proposals and considerations. A documented list of these proposals and considerations can be provided
- When a dispute cannot be resolved it provides the opportunity to narrow the issues that require a Court decision
- If an agreement is reached a Mediated Agreement can be provided and taken to lawyers for preparation for legally binding Consent Orders

Our Process for Finance and Property Matters

Step 1 – You contact us

- **An intake phone call**
(or a joint decision made during FDR on children's matters)
- **Booked for Individual Assessment Appointment**

Step 2 – Individual assessment
In person or Zoom

- **Invitation to participate is sent to the other party.**
The timing of this will be discussed with you in your individual assessment
- **Other party attends their Individual Assessment Appointment or declines to participate**
- **Assessed for suitability for Step 3**

**Step 3 - Family Dispute Resolution
Sessions with both parties**
In-person or Zoom

- **Attend Dispute Resolution Session**
- **Multiple sessions are likely**

THE FDR PROCESS

– The Questionnaire

- Once your intake is completed we will email you a Finance and Property Information guide. This guide will include a questionnaire to complete, asking:
 - Employment and earnings history:
Current, during the relationship and future considerations
 - Children's care arrangements (if relevant)
 - All your assets and liabilities and their values
 - Contributions made during the relationship
 - Future needs
 - Any issues relating to family violence or mental health issues
- This questionnaire is emailed to the Ringwood Family Relationship Centre by you and your practitioner will go through this with you during your assessment appointment

THE PROCESS

- The Assessment of Suitability

- A comprehensive assessment will be conducted to assess current suitability
- FDR is voluntary and may not be appropriate for all disputes. Reasons may include:
 - If people don't feel safe
 - If one person may be unable to negotiate freely
 - When the process is no longer appropriate or productive
 - Where either person does not have full knowledge of all assets and debts
 - When there is not a 'full and frank' disclosure from either person

THE PROCESS

- The Assessment of Suitability (Continued)

- In the assessment appointment you will have the opportunity to ask any questions that you may have arising from the questionnaire and to make any needed adjustments
- Your Family Dispute Resolution Practitioner will identify any other information or documentation that may be required in preparation for your Dispute Resolution session
- We will provide each party with a copy of a balance sheet that results from the assets and liabilities you have provided to us individually
- We will consider the format of Dispute Resolution format, such as joint (clients discussing issues with each other) or shuttle (clients discussions are separate) sessions

NOTE: The list of assets and liabilities that you provide in this Assessment session will be shared with the other party during the Dispute Resolution session

Preparing for FDR

In some circumstances, FDR can take place in a modified way (e.g. separate rooms-shuttle) to ensure everyone feels able to participate.

- When there is a current **Parenting Order** or a **Family Violence Intervention Order** naming any family member, it is necessary that you provide copies of the Orders to ensure the requirements of Court Order/s can be taken into account
- Practitioners must terminate FDR if requested to do so by a party or if it is considered no longer appropriate or productive

Preparing for FDR

(continued)

- Finance and property mediation is an **evidence-based** process. This means that each party may be required to provide copies of relevant valuations and statements to the other party upon request
- **Full and frank disclosure of relevant information is essential** to the FDR process. Each person **must** provide a full and frank disclosure of assets, debts, earnings, property and superannuation in their individual name, in joint names or with any other person and the value of each item. FDR cannot proceed unless this criterion is met
- **Superannuation** is a form of property for family law purposes. The superannuation splitting laws treat superannuation as a different form of property that can be divided or split as part of a property settlement

What Happens in a FDR Session?

Once a matter has been assessed as suitable for Dispute Resolution:

- Parties have the opportunity to view the list and values of assets and liabilities that the other party has provided
- Parties are then each given the opportunity to discuss the assets and liability list and whether they agree items are to form part of the pool for discussion
- Parties will then discuss the value of each item and attempt to agree on the value, and if not, what action can be taken to obtain a valuation they can both accept

What Happens in a FDR Session?

(continued)

- If parties agree on the asset and liability pool and their values, they will then have the opportunity to put forward proposals about how these should be divided between them and what is required to enable that to happen
- If parties reach agreement we can provide a formalised document that will outline the agreements made
- If parties are not able to reach agreement we can provide a list of the assets and liabilities with values that they have jointly listed and any proposals made

Family Dispute Resolution Practitioners (FDRP's)

- Practitioners are:
 - Impartial
 - Don't support the interests of one party over another
 - May provide general information but not legal advice
 - Don't adopt an advisory role about property agreements
 - Strongly recommend that each person has independent legal advice prior to making a legally binding agreement

Examples of Assets

- Real property (such as land, houses / investment properties etc.)
- Money owed to you
- Funds in banks, building societies and credit unions etc.
- Shares and debentures in public companies or shares in private companies
- Motor vehicles whether registered or unregistered (including cars, trailers, motorbikes, caravans, etc.)
- Furniture and household effects
- Personal property (e.g. jewellery, boat, artwork, collections such as; stamps, records or books)
- Anticipated tax refunds, Life insurance policies with a cash 'surrender' value
- Value of business or partnership, including plant, equipment, stock and goodwill
- Other assets

Examples of Liability (Debt)

- Mortgage/s
- Money borrowed from family members or others
- Credit card debt/Store Cards
- Personal Loans
- Hire Purchase/Leases
- Tax debts or HELP (HECS) debts
- Other liabilities

Preparing for FDR

- Considerations

Contributions to the value of assets/debts made prior, during and after the relationship such as:

- The **assets or debts** you each owned when relationship commenced
- **Financial contributions** during the relationship (including income from employment, inheritances or monetary gifts from family)
- **Non-financial contributions** during the relationship (i.e. being the primary parent or homemaker or renovations undertaken to any property)

Considerations (Continued)

- **No particular factor is given priority** from section 79(4) of the Family Law Act (1975). This means for example, a 'breadwinner' employed full time during the relationship/marriage will not necessarily be found to have made a greater contribution than the other party, who was a stay at home parent to the parties' children
- **You may need to speak with a bank**, or other lender about your borrowing capacity and affordability of repayments for any borrowed money if you are considering an agreement where you pay out the other party's shared interest in a property so that you have sole ownership of an asset

Further Considerations

- Future needs

Any factors which are believed will affect either of you in terms of financial or general living. For example:

- Age and state of health circumstance
- The care arrangements for any children under the age of 18
- Capacity for current and future employment opportunities (including impending changes, retirement or retrenchment).
- Any current and likely future income-earning potential
- Whether either or both party has re-partnered in a de facto relationship, or is re-married
- Any other special needs of yourself, children or other party (i.e. physical or mental health issues)

Reaching an Agreement

- Parties who reach agreement at the Ringwood Family Relationship Centre are provided with a document which outlines their proposed agreement
- Proposed Agreements are **not legally binding** agreements
- Proposed Agreements can remain informal or be formalised, making an agreement legally binding
- To formalise an agreement it is **strongly recommended** that each party discuss the terms of the Proposed Agreement with their own independent lawyer

Options for splitting property and finances

Parties have four options when splitting their property and finances:

- 1. A non-legally binding arrangement**
 - 2. A legally binding financial agreement**
 - 3. Consent orders, or**
 - 4. Litigation**
- Deciding between these options is a matter for the parties
 - The best course will depend on what the parties want to achieve in their particular circumstances and the legal advice that they receive

Importance of Legal Advice

- Legal advice is strongly recommended for everyone considering a property and financial agreement. It is important that in obtaining advice you:
 1. Provide your lawyer with the whole picture in an objective way, taking into account factors on both sides
 2. Request a range of likely outcomes, such as in the event of the matter going to Court, expressed either in dollars or percentage terms, including an indication of the worst possible outcome for you, the best possible outcome, and the most likely outcome
 3. Obtain an idea of the likely cost and time delays involved in taking the matter through the various stages of the Court process

Being legally informed can assist you to feel confident about considering options and proposing solutions and that the financial decision being considered is legally appropriate.

Review of the Finance and Property Process

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Thank you

Remember to provide any current **Parenting Order or a Family Violence Intervention Order (IVO)**

Email these documents to:

cso@each.com.au

Further information can be found at the **Federal Circuit and Family Court of Australia** website:

www.fcfcoa.gov.au/fl/fp/overview