RESOURCE

Family Law and Property Settlement Guide 2026

BATEYS LAW FIRM

ESTABLISHED 2004

Disclaimer: This guide is general information only. It is not legal advice and does not take account of your circumstances. Obtain advice from a lawyer about your own situation.

Reviewer: Bruce Batey, Director   Last reviewed: July 2026

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ABOUT THE AUTHOR

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Bruce Batey is a director of Bateys Law Firm and practises in family law, wills and estate planning. He advises clients on their options in a friendly, professional and caring environment.

Understanding Property Settlement in Australia

The legal framework for property settlement is governed by the Family Law Act. It is not as simple as a 50/50 split; the Federal Circuit and Family Court of Australia (FCFCOA) looks at the holistic picture of the marriage or de facto relationship.

Professional Note

"Property includes all assets and debts held individually or jointly, including superannuation and business interests."

The 4-Step Legal Process

1. **Identify and Value**
Compile a full list of all assets, liabilities, and financial resources.
2. **Assess Contributions**
Review financial (earnings) and non-financial (homemaking, parenting) contributions. From 10 June 2025, the court must consider the economic effect of family violence.
3. **Current and Future Circumstances**
Adjust for age, health, income capacity, and care of children. The court must consider the economic effect of family violence (including economic or financial abuse).
4. **Just and Equitable**
The Court will only make an order if it is satisfied the outcome is just and equitable. This requirement applies throughout the process.

Common Myths Debunked

Clarifying misconceptions about Australian Family Law.

MYTH

"Assets I owned before the marriage are automatically protected and stay mine."

THE FACT

How initial contributions are assessed depends entirely on the facts of each case. Initial contributions are considered, but they are often 'eroded' over long relationships as they are mixed with marital wealth and non-financial efforts.

MYTH

"The person whose name is on the title deed owns the property."

THE FACT

The Federal Circuit and Family Court of Australia (FCFCOA) looks past legal title to the beneficial interest. All assets are part of the property pool available for division, subject to the Court being satisfied that an order is just and equitable.

The 3 Pathways to Property Settlement

PATHWAY	DESCRIPTION	BENEFIT	LEGAL BINDING
Consent Orders	A written agreement filed with and approved by the court. Provides a decision-making pathway when agreement cannot be reached.	Cost-effective, finality, duty exemptions may be available in some circumstances.	COURT BINDING
BFA (Binding Financial Agreement)	A private contract between parties; requires independent legal advice. A BFA is only binding if strict statutory requirements are met.	Highly flexible, does not require court approval. A court may set one aside in certain circumstances.	PRIVATE CONTRACT
Litigation	When agreement cannot be reached, the Court makes the decision.	Ensures a resolution when one party is uncooperative.	JUDICIAL ORDER

Your Property Settlement Action Plan

Phase 1: Information Gathering

- **Financial Statements**
Bank statements (last 12 months), tax returns, and payslips.
- **Superannuation**
Latest member statements for all accounts.
- **Property Valuations**
Current market appraisals or formal valuations for real estate.
- **Liabilities**
Mortgage balances, credit card debts, and personal loans.

Matters to discuss with your lawyer

Before negotiating, ensure your personal security and financial independence.

STEP 01:
Open a separate personal bank account if you have not already done so.

STEP 02:
Update your Will and Power of Attorney.

STEP 03:
Notify your accountant and mortgage broker of the separation.

Parenting Arrangements & Divorce

The Court decides who makes major long-term decisions for a child based on the child's best interests. Parents may be ordered to make those decisions jointly, or one parent may be given sole decision-making responsibility. There is no longer a presumption of equal shared parental responsibility.

- **Best Interests of the Child**
- **Time With Each Parent — decided case by case**
- **Family Dispute Resolution (Mediation)**

SAFETY CONTACT INFORMATION

If you are concerned about your safety, contact 000. 1800RESPECT — 1800 737 732.

Note: Since 6 May 2024, the Court applies a single list of best-interests factors under s 60CC. Safety is the paramount consideration.