

How are future needs considered in family law property settlement?

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Following the breakdown of a marriage or de facto relationship, often a property settlement will need to take place to divide the assets of the relationship. One crucial factor the Court will need to determine is what are the future needs of each of the parties.

These future needs are important because they help ensure that financial orders are fair and equitable, not only based on present circumstances but also considering the long-term impact of the separation.

How does the Court approach a family law property settlement?

Prior to assessing the future needs of the parties, the Court must look at a number of factors. The *Family Law Act 1975* (Cth) ('the Act') contains several provisions that help guide the Court in determining how assets should be split amongst parties. These steps are:

1. Is it just and equitable to divide the parties' property?
2. What is the property involved, and what is the value of the assets and liabilities of the parties?
3. What contributions have the parties made, both financially and non-financially, to the property?

Notably, the urban myth of 50:50 equal distribution of all assets in property settlement is inaccurate. After the Court has considered the above steps, it then considers what the future needs of each party are? In answering this, the Court looks to section 75(2) of the Act to provide a framework for its assessment.

Matters to be taken into consideration for spousal maintenance under s 75(2) of the *Family Law Act*

There are several factors the Court needs to consider when assessing future needs (spousal maintenance) in property settlement matters.

Age and health of the parties

The age and physical or mental health of each party are key considerations when considering future needs. For instance, if one partner is nearing retirement or requiring medical care, this is likely to diminish their earning capacity and will mean that their ability to financially support themselves in the future may be limited.

Therefore, the Court may award them additional support to help meet those anticipated needs.

Income, property, and financial resources

The current and potential future earning capacity of each of the parties must also be considered when evaluating future needs after separation.

If one party lacks qualifications, has experienced a disrupted career due to caregiving responsibilities or homemaker duties, or has limited work experience, this will impact their ability to earn an income in the future.

On the other hand, if one party has more experience and advanced qualifications, this is likely to lead to greater prospects for future income growth or business opportunities and must be considered to ensure a fair and equitable property settlement.

Care of **children and other dependents**

The party with primary responsibility for caring for any children under 18 is often at a financial disadvantage due to the time required to care for children, which can limit their ability to work or earn an income.

The Court considers how these caregiving responsibilities will affect the future financial needs of the primary caregiver. This factor also encompasses the potential future costs associated with raising children and other dependents, such as education, health care, and general living expenses.

Financial **commitments**

Ongoing obligations such as housing, rent, education, medical expenses and child support will be necessary to examine when working out the future needs of a party. If one party is expected to bear a significant proportion of such future financial burdens, such as for the care of children or other family members, this must be factored into any property settlement or financial agreement.

Superannuation or pension entitlements

The Court will also consider any interests parties may have in superannuation or pension schemes. Other than any real property of the relationship, often a party's superannuation interest can be the largest asset they are entitled to.

If one party has been unable to work, for instance, due to caregiver responsibilities or has limited future capacity to work and accumulate superannuation entitlements, this may seriously affect their ability to support themselves following the separation and into retirement.

As such, often parties will seek an equalisation of superannuation interests or compensation for pension entitlements to ensure their future needs are addressed.

Standard of living

The Court attempts, where possible, to ensure that neither party experiences a drastic decline in their standard of living as a result of the separation.

However, this must be balanced against the fact that maintaining two households after a separation is usually more expensive than maintaining one during the relationship, and sometimes, both parties may experience some reduction in their standard of living.

Impact of the relationship's length and contributions

In a marriage or de facto relationship that lasted many years, with one party contributing as a homemaker or caregiver while the other focused on career advancement, the Court will consider how this arrangement has affected each party's financial position.

It may be difficult for a party that has been out of the workforce for a long period of time to return to employment and earn sufficient income. Similarly, consideration must be had for the non-financial contributions this party may have made in their capacity as a homemaker, carer and supporter of the party with the ability to build wealth and progress their career.

New relationships or changes in financial circumstances

The Court can consider how future relationships or changes in circumstances may impact future financial needs. For instance, the Court may take into account circumstances where one party has entered into a new relationship following separation where they receive financial support from the new partner.

Financial arrangements may also be impacted by a promotion, significant change in employment status or job loss following separation, as this will influence their ability to maintain their future needs.

Any other relevant **factors impacting future needs**

The Court has broad discretion to consider any other circumstances that might impact the parties' future needs. This may include factors such as:

- any anticipated medical expenses;
- the effect that any proposed financial orders may have on the ability of creditors to recover debt; and
- 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.

In considering all the above factors and more, the Court's ultimate goal is to ensure a fair and just property settlement, recognising that the financial repercussions of a separation can continue long after the relationship has ended.

Get help from a family lawyer

Dividing the assets of a relationship can be a complicated and emotional process. A family lawyer can guide you through a property settlement to ensure that not only your current needs are addressed but that your future interests are also protected.

Contact us to speak with one of our experienced family lawyers about your specific circumstances.

Contacting Smith Family Law

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