

# Property Settlement Workbook



This workbook can help you work out who should get what after you separate.

## Disclaimer

The guidance provided in this workbook is not legal advice, it is information only. This workbook has been designed for you to use with legal help from a lawyer.

North Queensland Women's Legal Service believes the information provided is accurate as at December 2020 and does not accept responsibility for any errors and omissions.

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## How can this workbook help me?

This workbook can help if you are:

- » trying to mediate with your partner to reach a property settlement
- » preparing an application to a court for a property settlement

## How do I complete this workbook?

When you go to mediation or the Family Court for a property settlement there are four main steps to working out who gets what. This workbook will help you prepare for each of the different steps in the property settlement process.

To complete this workbook and prepare for these different steps you will need to:

- » Complete the **Personal Overview Form**
- » Complete **Table 1** *Current Assets*
- » Complete **Table 2** *Current Liabilities*
- » Work out the **total net worth** of the property
- » Complete **Table 3** *Assets brought by you into the relationship*
- » Complete **Table 4** *Liabilities brought by you into the relationship*
- » Complete **Table 5** *Assets brought by your partner into the relationship*
- » Complete **Table 6** *Liabilities brought by your partner into the relationship*
- » Complete **Table 7** *Contributions made by you during the relationship (both financial and non-financial)*
- » Complete **Table 8** *Contributions made by your partner during the relationship (both financial and non-financial)*
- » Make a list of **important factors** you think should be considered to help work out each person's future needs

# Complete the *Personal Overview Form*

Please complete the Personal Overview Form. These details will be used to help your lawyer understand your situation.

Please Provide the following details	
Your name	
Your date of birth	
Your country of birth	
Your ex-partner's name	
Your ex-partners date of birth	
Your ex-partners country of birth	
Do you receive a social security payment? If yes, what type of payment and amount per fortnight	
Are you employed? If you are employed how much do you earn each week/ fortnight?	
Does your ex-partner receive a social security payment? If yes, what type of payment and amount per fortnight?	
Is your ex-partner employed? How much do they earn each week/ fortnight? If you don't exactly know, try and provide an estimate.	
Have you re-partnered? If so are they employed? How much do they are each fortnight? If you don't know exactly, try and provide an estimate.	

If you were married please answer the questions below	
How long was your relationship (include when the relationship first started)?	
When did you get married? What town did you get married in?	
When did you separate?	
Are you divorced? If yes, what was the date of divorce?	
Do you have any children from this relationship or any other relationship? Please provide their names and date of birth.	Children of this relationship Children of other relationship
If you do have children when do the children of this relationship spend time with you? When do they spend time with the other parent?	

If you were in a defacto relationship please answer the questions below	
How long was your relationship (include when the relationship first started)?	
When did you separate?	
Do you have any children from this relationship or any other relationship? Please provide their names and date of birth.	Children of this relationship Children of other relationship
If you do have children when do the children of this relationship spend time with you? When do they spend time with the other parent?	

## Some important things to understand when you complete this workbook

- » Many things are considered when deciding who gets what property — like if any children need support and what contributions were made by both people during the relationship.
- » It may not matter whose name is on the document (such as a home title) or who purchased an item or made the debt. If your home or any other real estate is only in your ex-partner's name you should get legal advice about how you can protect your rights in relation to that property.
- » If your ex-partner is disposing of (selling or hiding) property or money you should get legal help immediately.
- » Even if you earn little or no income you may still be entitled to property.
- » Property can include things you got before the marriage or relationship started and also after it ended, not just at separation.
- » The law does not look at who left the relationship. Regardless of if you mediate or go to court, you need to keep in mind the aim of the law is to make sure people reach a fair property settlement that meets each person's future needs.

### What if I was in a defacto relationship?

If you were in a defacto relationship in Queensland you can still use this workbook to help you negotiate or apply to a court for a property settlement.

#### **What does the law say about defacto couples trying to reach a property settlement?**

The law about dividing property between defacto couples differs from state to state. In Queensland the law is different for defacto couples who separated before 1 March 2009 and for defacto couples who separated after 1 March 2009. If you were in a defacto relationship you should get legal advice to help you understand your legal rights.

##### *If you separated after 1 March 2009*

If you were in a defacto relationship and separated after 1 March 2009, you can make an application to the Family Court for a property settlement under the *Family Law Act*. This means you can do things like make an application to the Family Court for consent orders about property settlement.

##### *If you separated before 1 March 2009*

Before 1 March 2009 separating couples in defacto relationships could not use the Family Court to mediate or make decisions about their property. However, if you separated before 1 March 2009, and you both agree, you can still make an application to the Family Court for a property settlement under the *Family Law Act*. If you don't agree the Property Law Act will apply.

## When can I apply for a property settlement?

Although you can apply for a property settlement at any time after separation, it is important to try and sort things out as soon as possible. This is because if you can not reach an agreement between yourselves you must take court action within certain time limits.

If you were in a defacto relationship you must apply to court for property adjustment orders within two years from the date of separation. If you were married and get a divorce, you must apply to court for property adjustment orders or maintenance orders within 12 months of your divorce becoming final.

If you do not apply to the court within these time limits you will need to ask the court for special permission. This can be difficult to get. If the time limit has already passed, or the time limit is going to pass soon, you should get legal advice immediately.

## What if I leave the house – do I lose my rights to property?

No. If you leave the family home, you do not lose your rights to a share of the house, or any other property. If you can, it is a good idea to get legal advice before you leave.

## How does the law decide who gets what?

In dividing property the law looks at everything the couple owns and earns, as well as the contributions each person has made during the relationship.

All the property of the relationship is distributed according to what the law considers fair. It doesn't matter why your relationship ended. The law's main focus is on making future arrangements that are fair and will meet everyone's needs.

When you go to mediation or the Family Court for a property settlement there are four main steps to working out who gets what. This workbook will help you prepare for each of the different steps in the property settlement process.

## What can I do if I am in financial hardship — should I agree to a property settlement to try and get some money?

No. You should never agree to a property settlement if you are in financial hardship and feel you have no other choice. You should only agree to a property settlement after:

1. you have got legal advice and financial advice
2. all the steps in the property settlement process have taken place
3. accurate and comprehensive information and documentation has been provided.

## Documents you should try and find

It is a good idea to find documents that can:

- » help support the information you provide in this workbook
- » be used to identify you and any children.

We have listed below some of the different documents you should try and provide (don't worry if you can't find all of these documents or copies of them). Exactly what documents you will need to find will depend on your individual circumstances.

If you have to leave the family home you should try and take any documents you might need with you.

### Types of documents you should try and find

- » your birth certificate, any children's birth certificates
- » Wills
- » passports
- » bank and cheque books
- » visas
- » title information for any property (regardless of whose name the property is in)
- » loan documents and bank statements for any property (regardless of whose name the property is in)
- » proof of ownership of any vehicles, motorbikes and boats (regardless of whose name the property or any document is in)
- » loan documents relating to any vehicles, motorbikes and boats (regardless of whose name the property or any document is in)
- » bank statements relating to both joint and individual accounts (how many and how far back you will need to go, will depend on your individual circumstances — you should at least try and provide current statements)
- » tax returns and assessments for both you and your ex-partner (you should try and find tax returns and assessments from the last three years)
- » superannuation statements for both you and your ex-partner (it is a good idea to provide a current statement and a statement at the time of separation)
- » proof of earnings for both you and your ex-partner like recent pay slips
- » proof of any Centrelink payments like a government benefit statement
- » life assurance and life insurance policies
- » any receipts and invoices that can help you provide a picture of your financial situation
- » credit card statements (regardless of whose name the account is in)
- » documents providing information about any assets and liabilities relating to a business, company or family trust that either you or your ex-partner are connected to (for example if you or your ex-partner run a business or are a director of a company)



## The four steps in the property settlement process

On page 31 we provide a list of organisations who can help if you are in financial hardship.

### **Step 1** – Identifying and valuing the property (also known as the property pool)

The property of the relationship (all assets and liabilities) is identified and valued.

The property of a relationship can include:

- » your family home, cars, any financial resources, furniture, debts like a mortgage, and each person's superannuation
- » assets and liabilities you got before or after the marriage or relationship
- » assets and liabilities owned individually, with another person, or by a family trust, family company or business.

### **Step 2** – Who contributed what?

This step involves determining what each person has contributed to the relationship including earnings, savings, gifts, inheritances or property owned before the relationship, improvements to property, and contributions as a homemaker and parent.

### **Step 3** – Considering any other important factors

This step involves considering any other important factors to determine the future needs of each person, like:

- » how much money each person currently earns or could earn in the future
- » age and health of each person
- » care and financial support of children
- » responsibility for looking after other people
- » length of the relationship
- » eligibility for a pension, allowance or benefit.

### **Step 4** – Is it fair?

This step involves working out what is fair for each person — considering all the circumstances. During this step the law does not look at who left the relationship or why. Regardless of whether you mediate or go to court, the aim is to make orders that are fair and meet future needs.

# Preparing for Step 1

## Identifying and valuing all the property of the relationship

This section of the workbook can help you identify and value any property (assets and liabilities) of your relationship.

You need to do three things in this workbook to prepare for Step 1. They are:

- » Complete **Table 1** *Current Assets*
- » Complete **Table 2** *Current Liabilities*
  - » These Tables will help you identify the current assets and liabilities owned by both you and your ex-partner. As well as any assets and liabilities you own with another person or that are owned by a family trust or family company.
- » Work out the total net worth of the property
  - » The total net worth is all the available property and money that can be divided between you and your ex-partner. In other words, it is the difference between your total assets and your total liabilities. This is why it is important to identify all the current assets and liabilities of the relationship.

# How do I complete **Table 1 Current Assets** and **Table 2 Current Liabilities** ?

To complete Table 1 and Table 2 you will need to:

- » identify any assets and liabilities and provide a detailed description of them
- » provide a current market value of each asset and the value of each liability
- » explain who has possession of each asset and whose name the asset is in
- » explain whose name any liabilities are in.

## Here is some information that will help you complete Table 1 and Table 2

**What are assets?** Assets are things like:

- » real estate, including the family home
- » money held as cash or in bank accounts
- » investments
- » superannuation
- » vehicles like cars and motorbikes
- » money owed to you by a company/trust
- » property owned by a family company or business
- » white goods
- » inheritances
- » shares
- » jewellery
- » boats
- » furniture
- » insurance policies (if redeemable)

**What are liabilities?** Liabilities are any debts like:

- » mortgages
- » credit card debt
- » business debts
- » personal loans
- » personal debts
- » business loans

## **How can I work out the current market value of any assets?**

You will need to work out the current “market value” of any asset. Market value is not the replacement cost of the asset. It is what someone would be willing to buy your asset for if you sold it on the “open market” in its current condition.

### **Example — working out current market value**

*Kate bought a new fridge and washing machine in 2006. The market value of her fridge and washing machine is not how much new ones would cost her to buy now.*

*To work out what someone might pay for her fridge and washing machine she has looked at the local Trading Post and the classifieds in her local paper. By looking at what other people are asking for similar fridges and washing machines Kate feels she can work out an accurate and reasonable market value for her own fridge and washing machine.*

Here are some tips that can help you work out the current market value of any assets.

### *House*

A real estate agent will be able to appraise your house (this means provide an estimate price for your house). It is a good idea to ask a minimum of three real estate agents to appraise the house. This may involve a cost and you should ask the agent about this before they do any work for you.

### *Cars*

You can get an online valuation for your car from websites like Red Book ([www.redbook.com.au](http://www.redbook.com.au)) or Glass's Guide ([www.glassguide.com.au](http://www.glassguide.com.au)).

### *Furniture and white goods*

A good way to get an indication of the market value of any furniture and white goods is to look at:

- » the classifieds section in your local papers, or
- » your local Trading Post.

Second hand dealers may also be able to provide you with an estimated market value for your furniture and white goods. Antique dealers may also provide you with an estimated market value for any antique furniture.

### *Jewellery*

To obtain a market value for your jewellery you can ask a jeweller to value it (this may involve a cost).

## **What if we have been separated for a while and in that time major improvements have been made to our home or other properties?**

The value of your home or other properties may have changed significantly from the time you separated as a result of major improvements. These major improvements are considered contributions. Speak to your lawyer about any improvements made to your home or any property.

## **How do I work out whose possession the asset is now in?**

You need to include details about who actually has the asset now. You also need to provide any information about whose name the asset is registered in.

# Table 1 *Current Assets*

*(remember you need to list the assets that exist now)*

Description of asset	Market value	Whose name is the asset in?	Who has possession?
Home			
Investment property			
Vehicle 1			
Vehicle 2			
Superannuation			

Description of asset	Market value	Whose name is the asset in?	Who has possession?
<b>Business/company assets</b>			
<b>Furniture</b>			
<b>White goods</b>			
<b>Shares</b>			
<b>Jewellery</b>			
<b>Motorbike</b>			

Description of asset	Market value	Whose name is the asset in?	Who has possession?
Boat			
Inheritance			
Family trust assets			
Now you need to add up everything you put in the Market Value columns to get the total market value of current assets.			
<b>Total market value of current assets</b>			

# Table 2 *Current Liabilities*

(remember you need to list the liabilities that exist now)

Description of liability	Value	Whose name is the liability in ?
Mortgage		
Personal debts		
Loan 1		
Loan 2		



Description of liability	Value	Whose name is the liability in?
<b>Credit Card 1</b>		
<b>Credit Card 2</b>		
<b>Business/company debts</b>		
<b>Debts owned by a family trust</b>		
<b>Investment property mortgage</b>		
<b>Now you need to add up everything you put in the Value columns to work out the total value of the current liabilities</b>		
<b>Total value of current liabilities</b>		

# Working out the total net worth of the property

## Why is it important to work out the total net worth?

When you know the total net worth you know the real value of the property of the relationship. The total net worth is everything actually available to divide between you and your ex-partner.

For example if you have a home valued at \$350,000 but you have a mortgage for \$260,000, the total net worth of the home is \$90,000. It is the total value of the asset (the home) less the total value of the liability (the mortgage).

When you work out the total net worth you are subtracting your total liabilities from your total assets. It is very important to know the total net worth of the property before you try and mediate, work out a consent order or go to court.

## How do I work out the total net worth of the property?

You can do this by using the information in **Table 1 Current Assets** and **Table 2 Current Liabilities**.

You will need the total value of *current assets* you worked out at the bottom of **Table 1**.

You will also need the total value of *current liabilities* you worked out at the bottom of **Table 2**.

When you subtract the total value of *current liabilities* from the total value of *current assets* you get the *total net worth* of your relationship.

### **Example - working out total net worth**

*When Madeline used this workbook her total value of current assets came to \$380,000. And, her total value of current liabilities came to \$239,000.*

*To calculate her total net worth she used the formula: Total value of current assets – total value of current liabilities = total net worth.*

*Madeline's total net worth is \$380,000-\$239,000. Her total net worth = \$141,000*

## **Use this calculation to work out the total net worth**

***Total value of current assets – total value of current liabilities = total net worth***

Insert here the total net worth you have calculated \_\_\_\_\_

## Preparing for Step 2

### Working out what each person has contributed to the relationship

The law takes into account what each person has contributed to the relationship.

This includes:

- » assets owned before the relationship
- » liabilities brought into the relationship
- » any contributions as a homemaker, parent and carer (both financial and non-financial)
- » improvements made to any property.

This means you will need to work out:

- » the assets and liabilities you brought into the relationship
- » the assets and liabilities your ex-partner brought into the relationship
- » what contributions you made during the relationship (both financially and non-financially)
- » what contributions your ex-partner made during the relationship (both financially and non-financially).

You need to do the following things to prepare for Step 2 and to help you work out the contributions each of you made to the relationship. They are:

- » Complete **Table 3** *Assets brought by you into the relationship.*
- » Complete **Table 4** *Liabilities brought by you into the relationship.*
- » Complete **Table 5** *Assets brought by your ex-partner into the relationship.*
- » Complete **Table 6** *Liabilities brought by your ex-partner into the relationship.*
- » Complete **Table 7** *Contributions made by you during the relationship (both financial and non-financial).*
- » Complete **Table 8** *Contributions made by your ex-partner during the relationship (both financial and non-financial).*

## Complete Table 3 *Assets brought by you into the relationship*

To complete Table 3 you will need to:

- » list the assets you brought into the relationship
- » estimate the value of the asset when the relationship started
- » explain what happened to the asset. For example was it sold, given away or do you or your ex-partner still have it?

### Important Tip

Initial contributions are weighed against all other contributions made during the relationship.

For example if you were in a relationship for a long period of time, any initial contributions will be offset by other contributions made during the relationship.



### Ava's story

My husband and I were married for 35 years. When we first started our relationship he owned a house. When we separated and applied to the court for a property settlement, the court did not place a lot of importance on the fact he brought a house into the relationship because of all the other contributions made by each of us during our marriage. Because we were married for quite a while, and we both made considerable contributions during the marriage each asset and liability we brought into the relationship was considered a joint asset we shared equally.

**Table 3** *Assets brought by you into the relationship*

Description of asset	Value of asset when relationship started	What happened to the asset?
House		
Gifts from family		
Inheritances		
Car		
Investment property		
Furniture		

## Complete Table 4 *Liabilities brought by you into the relationship*

To complete Table 4 you will need to:

- » list the liabilities you brought into the relationship
- » estimate the value of the liability when the relationship started
- » explain what happened to the liability. For example did you have a liability like a mortgage that you paid off during the relationship? Or do you or your ex-partner still have responsibility for the liability. For example do you still make payments for a car or personal loan?

**Table 4** *Liabilities brought by you into the relationship*

Description of liability	Value of liability when relationship started	What happened to the liability?
<b>Mortgage</b>		
<b>Credit card debt</b>		
<b>Personal loan</b>		

## Complete Table 5 *Assets brought by your ex-partner into the relationship*

To complete Table 5 you will need to:

- » list the assets your ex-partner brought into the relationship
- » estimate the value of the asset when the relationship started
- » explain what happened to the asset. For example was it sold, given away or do you or your ex-partner still have it?

**Table 5** *Assets brought by your ex-partner into the relationship*

Description of asset	Value of asset when relationship started	What happened to the asset?
House		
Gifts from family or friends		
Inheritances		
Car		
Furniture		
Loans from Family or friends		

## Complete Table 6 *Liabilities brought by your ex-partner into the relationship*

To complete Table 6 you will need to:

- » list the liabilities your ex-partner brought into the relationship
- » estimate the value of the liability when the relationship started
- » explain what happened to the liability. For example did you and your ex-partner pay off a liability that he brought into the relationship like a mortgage? Or do you or your ex-partner still have responsibility for the liability. For example do you still make payments for a car or personal loan?

**Table 6** *Liabilities brought by you ex-partner into the relationship*

Description of liability	Value of liability when relationship started	What happened to the liability?
<b>Mortgage</b>		
<b>Credit card debt</b>		
<b>Personal loan</b>		



## **Complete** Table 7 *Contributions made by you during the relationship (both financial and non-financial)*

The law also considers contributions that aren't just assets and liabilities. It also takes into account things like staying home and looking after any children, as well as unpaid domestic tasks.

When you complete Table 7 you should consider things like:

- » Did you stay home to look after any children?
- » Did you undertake domestic tasks?
- » Did you work during the relationship?
- » Did you pay for any household expenses?
- » Did you improve any property?
- » Did you undertake unpaid work as part of a small business your ex-partner ran or both you and your ex-partner ran?
- » Did you receive an inheritance or gift or loan from family or friends during the relationship?
- » Did any friends or family complete on the property at a reduced rate or unpaid?



## Mary's story

I got together with Robert at the beginning of 1998. We were defacto partners and separated after 10 years together. For the first seven years of our relationship I stayed at home and cared for our children while Robert worked. Robert has his own plumbing business.

While I looked after our children I would also do accounting and bookwork for Robert's business. I also did all the cleaning and cooking and anything to do with running the house.

After seven years I started working part-time for an accounting firm while the kids went to pre-school and school. I also did nearly all of the chores and work related to running the house.

When I filled out this workbook I sat down and really thought about everything I had contributed to our relationship. In Table 7 I included the contributions I thought would provide a good picture of:

- » the time I spent caring for our children throughout the relationship
- » all the domestic tasks I did throughout the relationship (including all the cleaning, cooking and household organising)
- » the contributions I made to Robert's plumbing business like all the administration work and bookkeeping
- » the wages I earned while working part-time at the accounting firm

I couldn't put a monetary value on a lot of my contributions. My lawyer said that this was ok and a lot of the time you can't put a dollar value on quite a few contributions. This is why my lawyer told me it was important to provide a detailed description of any of my contributions.

**Table 7** *Contributions made by you during the relationship  
(both financial and non-financial)*

Description of contribution	\$ value (if any)

Description of contribution	\$ value (if any)

## **Complete** Table 8 *Contributions made by your ex-partner during the relationship (both financial and non-financial)*

When you complete Table 8 you need to consider the financial and non-financial contributions your ex-partner made to the relationship. For example:

- » Did your ex-partner work during the relationship?
- » Did your ex-partner stay at home and look after the children during the relationship?

### **Table 8** *Contributions made by your ex-partner during the relationship (both financial and non-financial)*

Description of contribution	\$ value (if any)

## Preparing for Step 3

### Looking at any other important factors

During Step 3 the law considers any important and relevant factors that can help work out the future needs of each person like:

- » age and health of each person
- » how much money each person currently earns and could earn in the future and how easily they could find employment
- » if you are responsible for the care of any children
- » if you are responsible for another person (for example if you are someone's carer)
- » length of the relationship
- » your eligibility for a pension, allowance or benefit
- » the standard of living you are used to
- » if you have also made an application for spousal maintenance
- » any child support you or your ex-partner is obligated to pay.

**Provide** details of any factors you think might be important for consideration in Step 3 (use the examples provided above as a guide).

Important factors



## Step 4 Is it fair?

This step involves working out what is fair for each person considering all the circumstances. A final decision is made by looking at all the circumstances including:

- » the real value of all the property of the relationship (in other words the total net worth of the property)
- » each person's contributions to the relationship
- » all the other important and relevant factors.

All the information you have prepared for Steps 1, 2 and 3 is now considered.

During Step 4 the law does not place any importance on who left the relationship or why. Regardless of if you mediate or go to court, the aim is to make property settlement orders that are fair and meet each person's future needs.

## Workbook ends

### What should I do now I have finished this workbook?

You should now take your completed workbook to a lawyer so they can help you prepare for the next step in the property settlement process.



## Organisations that can help if you are in financial hardship

Separation can result in financial hardship. Although you may have to deal with tough times you should never agree to a property settlement because you feel you have no other choice.

There are organisations who can help if you are in financial difficulty. We have listed some below.

- » **Centrelink**
  - » 136 150 (Family Assistance Office)
  
- » **Queensland Government's Housing and Homelessness Services**
  - » 1300 880 882 (Monday to Friday, 6.00am to 6pm, for the cost of a local call)
  - » Cairns (07) 4039 8822
  - » Townsville (07) 4760 7378
  
- » **Family Emergency Accommodation Townsville**
  - » (07) 4772 1450
  
- » **Salvation Army**
  - » 1300 363 622 (24-hour crisis counselling)
  
- » **Lifeline**
  - » 131 114 (24-hour crisis counselling)
  - » Cairns (07) 4050 4955
  - » Townsville (07) 4775 9100
  
- » **Centacare**
  - » Cairns (07) 4044 0130
  - » Townsville (07) 4772 9000

# Notes





## Who are we?

North Queensland Women's Legal Service is a not for profit, specialist community legal service run by women, for women.

We advocate for and empower women by providing free, accessible and high quality legal advice and assistance. We also work holistically within the broader community to provide legal education and undertake important policy and law reform work to address issues of injustice and inequity faced by women.

With offices in both Townsville and Cairns, we assist women from Sarina in the south, to the Torres Strait in the north and west to the Northern Territory border.

## Contact Us

Townsville: (07) 4772 5400

Cairns: (07) 4033 5825

Advice Line: 1800 244 504

[nqwls.com.au](http://nqwls.com.au)