

## THE 4 STEPS YOU SHOULD FOLLOW BEFORE COMMENCING FAMILY LAW PROCEEDINGS



FAMILY LAW  
**FAMILY LAW PROCEEDINGS**

commitment to make a difference

# THE 4 STEPS YOU SHOULD FOLLOW BEFORE COMMENCING FAMILY LAW PROCEEDINGS

## STEP 1 – OBTAIN ADVICE FROM A SOLICITOR ABOUT YOUR FAMILY LAW MATTER

You should speak to your solicitor to get some preliminary advice about your likely range of entitlements to a property settlement under the **Family Law Act 1975 (Cth)**. If your matter involves parenting issues, you should speak to your solicitor about the factors under the **Family Law Act** that may be relevant to your matter.

In parenting matters, the focus should be on what arrangements are in the best interests of the child. **The Family Law Act** sets out a number of factors that assist the Court in determining what is in a child's best interest. Those factors are contained in Section 60CC and include:

- » Any views expressed by the child;
- » The nature of the relationship of the child with each parent and with other persons;
- » The likely effect of any change in the child's circumstances;
- » The capacity of each parent to provide for the needs of the child;
- » The attitude to the child, and to the responsibilities of parenthood, demonstrated by each parent;
- » Any family violence involving the child or a member of the child's family.

When advising you about your likely range of entitlements in a family law property settlement, your solicitor will guide you through what is often described as a 4 step process:

1. Identify and value the assets, liabilities and superannuation entitlements of both parties;
2. Assess and evaluate the contributions made by each party;
3. Determine whether an adjustment in favour of either party is warranted for factors such as income disparity, caring for children under the age of 18 or health needs;
4. Consider what, if any, orders for the adjustment of property would be just and equitable.

## STEP 2 – EXCHANGE RELEVANT FINANCIAL DOCUMENTS

In property matters, there should be an exchange of financial documents. Ideally, this should happen early on in a matter so that all the information is known. This can often facilitate an early resolution to the matter.

The sort of documents that are typically exchanged are:

- » Bank Statements for any account in which each spouse holds for the last 12 months;
- » Recent superannuation statements;
- » Tax Returns (individual and for any entity such as companies, trusts or partnerships) for the last 3 years;
- » 3 most recent pay slips;
- » Market appraisals for any real property, plant & equipment, cars and boats and other large assets;
- » Share statements;
- » Trust Deeds (if applicable).

If there is a dispute about the value of a particular asset, a valuation can be obtained by a qualified valuer.

Once there has been an exchange of documents and any valuation issues have been resolved, your solicitor will be in a better position to advise you about your likely range of entitlements to a property settlement under the *Family Law Act*.

### STEP 3 – NEGOTIATE A SETTLEMENT

Settlement negotiations can be done through solicitors sending letters to each other. Those letters can contain written offers of settlement. Sometimes there will be a round table conference involving the solicitor for each party and both of the parties. A private mediation can also be organised where an independent mediator facilitates settlement discussions. Sometimes, a combination of mediation and negotiation via correspondence is used in an effort to try and resolve a matter early so that neither party has to commence proceedings.

In parenting matters, it is a requirement under the *Family Law Act* for parties to first attempt mediation before filing an Application for Parenting Orders except in limited circumstances such as in case involving urgency or where there is family violence. Mediation can be accessed either through a private mediator or through the Family Relationships Centre. Once mediation has been attempted, you will be given a Section 60I certificate.

### STEP 4 – DOCUMENT YOUR AGREEMENT

If an agreement is reached, then your agreement in relation to property and/or parenting matters should be properly documented. This is usually done by filing Minutes of Consent Orders with the court (see Guide: The Importance of Documenting your Agreement).

## WE HAVEN'T REACHED AN AGREEMENT. WHAT NOW?

Sometimes an agreement cannot be reached despite your best efforts. If no agreement is reached then you will need to consider commencing proceedings in either the Federal Circuit Court of Australia or the Family Court of Australia. The Federal Circuit Court sits on circuit in Albury.

Don't despair if you do find yourself involved in family law proceedings. Statistically, most court proceedings that commence resolve before a final hearing.

Many applications filed in the court contain orders sought in an interim basis as well as orders sought on a final basis. Applications for interim orders are dealt with early in the proceedings and usually proceed based on the affidavits that have been filed and by oral submission. Once interim orders are made, those orders remain in place until final orders are made.

Once any interim applications have been dealt with, the next step in a property matter is a Conciliation Conference. This is similar to a mediation.

In most (but not all) parenting cases, a Family Report is ordered. The Report may be prepared by an expert such as a clinical psychologist or by the Family Consultant (employed by the court). The appropriate person appointed to prepare a Family Report will depend on the issues in your particular case.

The last stage in family law proceedings. A small percentage of matters that are filed in the Court proceed to a final hearing, with most matters settling before that point.

At all stages we will give you sound advice so you can make informed decisions about your family law matter.



contact Harris Lieberman

## ALBURY

Address:  
2/497 Smollett Street,  
ALBURY 2640

Phone:  
02 6051 5100

Fax:  
02 6051 0010

## WODONGA

Address:  
87 Hume Street,  
WODONGA 3690

Phone:  
02 6051 5100

Fax:  
02 6051 5110

commitment to make a difference