

## PROPERTY MEDIATION INFORMATION SHEET

When people separate, they need to make decisions about how to distribute property, finances and debts. The property mediation process can assist them to work out their property settlement in a safe and supported environment with the assistance of a skilled, impartial Family Dispute Practitioner (FDRP).

Property mediation is a confidential and voluntary process that requires both parties to be willing to participate and to agree to provide *full and frank disclosure* to each other of all assets, liabilities and other financial resources.

### When can we start the process of dividing our property and finances?

You can start the property mediation process at any time after you have made the decision to separate, or even prior to that (e.g. if you are still living under the one roof). However, there are time limits that apply if you are unable to reach an agreement and decide to apply to court:

- Within 12 months of divorce for married couples
- Within two years of the relationship ending for de facto relationships

### Do we need to get legal advice?

It is highly advisable for parties to seek independent legal advice. FDRP's are unable to provide advice to either party, so it is important that each of you have a good understanding of your legal position so that you can negotiate effectively in mediation. FDRP's can provide both parties with information on where to seek legal advice.

### How is mediation different from using lawyers?

Mediation for property settlement can be a more cost effective and less adversarial way for you to come to an agreement regarding your finances and property division after separation.

Even if you do not reach a final agreement, much of the preparation work that FDRPs will ask you to do is required by lawyers during a financial settlement process, so you may be better prepared for legal negotiations after going through the property mediation process.

### How much does it cost?

Property mediation fees are charged at an hourly rate. The FDRP will discuss fees in more detail with you.

### What is the process?

- Each party will have an initial one on one assessment with a FDRP to talk through your current situation and to see if Family Dispute Resolution (FDR) is suitable.
- During the Pre-FDR session, the FDRP will discuss your financial situation and highlight for you what information is needed to begin compiling before the joint mediation session.
- A joint session will be arranged for both parties to come together, not necessarily in the same room, to begin property settlement discussions. A second or third joint session may be arranged if required.

**In order for the process to be *just and equitable*, it is essential that parties provide full and frank disclosure of all assets, liabilities and financial resources.**

The process can be described in four steps:

### Step 1: What do we have and what is it worth?

Parties will list all assets and liabilities with the assistance of the FDRP to work towards an agreed asset pool.

*Full and frank disclosure* between you both will be encouraged at this stage, including exchanging documents such as superannuation statements, valuations and bank account statements.

### Step 2: How did we accrue our assets/liabilities?

This step helps parties to understand each party's contributions, both financially and non-financially, and can include contributions from other family members.

This part of the process looks at substantial and significant contributions that each party has made throughout the course of the relationship over and above working and raising children (if you have children under the age of 18), (e.g. house deposits, property renovations and inheritances). It is important to obtain legal advice about your individual circumstances and whether any adjustments may need to be made in the final settlement to reflect this.

### Step 3: What are our future needs?

The FDRP will help each party consider what their needs will be moving forwards (e.g. finding somewhere to live, ensuring that children are cared for, engaging in a study to be able to find employment). Amongst other factors, your income, earning capacity, skills and qualifications are considered at this point.

Your future needs may have an impact on the final agreement. You should obtain legal advice about your individual needs to obtain an indication of what the courts might consider fair and reasonable in your situation.

### Step 4: What is the division of assets and how will we carry this out?

The final step in the financial and property settlement process is making decisions about what the final agreement will be. This division must be *just and equitable*. The division is often reflected in a percentage figure.

### What happens next?

If you reach an agreement regarding your property settlement, you will receive a printed document reflecting this. This agreement is not legally binding or enforceable, however, it will assist you or your lawyer with the preparation of Consent Orders or a Binding Financial Agreement. It is strongly recommended that you formalise your financial settlement in one of these ways so that it is legally binding.

If you do not reach an agreement, you will be provided with a copy of the notes. However, there is no requirement for any other documentation to be issued by the FDRP prior to proceeding with legal negotiations or making an application to a court.

**Disclaimer:** This document is provided by Anglicare WA and is intended as a guide only. This information may not be appropriate to your specific situation and you should seek independent legal advice for your individual situation.