



Preparing for tomorrow: 'Future needs' in a Family Law property settlement

In a world where change is constant and the needs of families are always evolving, it is crucial to look to the future to anticipate the needs of parties involved in [Family Law property settlements](#).

As set out in our recent article titled '[5 things you need to know about separation & property settlement](#)', before altering parties' rights to, or interests in, property, the court must first be satisfied that it is appropriate to do so. If the court considers that a division of property is appropriate, the court must then adhere to the following 4-step process to quantify the parties' respective entitlements:

Step 1 - identifying and valuing the property available for distribution between the parties.

Step 2 - assessing the parties' respective contributions including any financial contributions, non-financial contributions and contributions to the welfare of the family as a homemaker and parent.

Step 3 - assessing each party's future needs in contemplation of their age, health, income earning capacity, and the care of any children.

Step 4 - considering whether the proposed division is 'just and equitable' in all of the circumstances.

This article focuses on Step 3 with respect to each party's future needs.

Section 75(2)/90SF(3) of the Family Law Act 1975 (Cth)

Under section 75(2) (married couples) and section 90SF(3) (de facto couples) of the Family Law Act 1975 (Cth), future needs of the parties are assessed by the court taking into account the following factors:

1. The age and state of health of each party;
2. Any income, property or financial resource of each of the parties and the ability of each party to receive gainful employment;
3. Whether either party has the care or control of a child of the relationship;
4. The commitments of each party that are necessary to enable that party to support themselves;
5. The responsibilities of either party to support any other person;
6. The eligibility of either party for a pension, allowance or benefit;
7. A standard of living that in all the circumstances is reasonable;

8. Whether the parties have any responsibility to creditors and what prospects the creditors have of recovering those debts;
9. The duration of the relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; and
10. Any other fact or circumstance which the court considers should be taken into account.

Once the court has reviewed the above factors on the individual circumstances of your matter, it may make a percentage-based adjustment in favour of one party after the contributions of the parties have also been taken into account.

An example of this is if one party earns substantially more than the other and will continue to do so into the future, an adjustment may be made in the favour of the lower income earning party. The assessment of future needs is not a one size fits all consideration and is dependent on individual circumstances. On that basis, obtaining legal advice with respect to your property settlement matter is vitally important, particularly to understand what your future needs are, if any.

How Can Andersons' Help?

We have a team of [Family Lawyers](#) experienced in all aspects of separation, divorce, property settlements and children's matters. We have 6 locations across South Australia that we practice from. If you would like to have a confidential discussion on your personal situation, please contact our friendly Family Law team on 8238 6666 or alternatively, send through your enquiry to enquiry@andersons.com.au.