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LawTalk Blog



If I separate from my spouse am I entitled to 50% of the assets?

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The simple answer to that question is "no, not necessarily".

And here's why....

Just because you have been married to (or in a de facto relationship with) someone for a period of time and own property together does not mean that the assets will be divided equally between you following separation.

The Family Law Courts weigh up a lot of competing factors to arrive at a fair decision. There is no magic formula that states how the assets will be divided after separation and the Courts have a wide discretion as to the division of assets.

The process of applying that discretion and weighing up the competing factor has been divided into 5 steps by the Courts.

1. Firstly, a list of each party's assets, liabilities and financial resources is made, known as the "matrimonial pool". Particular importance is given to the legal and equitable ownership of those assets.
2. Secondly, the question is asked whether or not, in the particular circumstances of the parties, there should be any change to the ownership of those assets.
3. Thirdly, an assessment is made, as a percentage, of the contributions (financial, non financial, and as homemaker and parent) that each of the parties have made to the acquisition, improvement and maintenance of the assets.

4. Fourthly, a consideration of the needs of the parties is made and whether any adjustment of the percentage is required due to those needs; and
5. Finally, applying the percentage to the property pool and assessing whether the effect is just and equitable.

The result of applying that 5 step process may be that it is appropriate for a 50/50 division of the matrimonial pool. However, it is common for orders for an unequal division of the property pool to be made or agreed to.

This "five step" process has developed in recent cases such as [Sebastian & Sebastian](#) following the landmark case of [Stanford v Stanford](#) - for an overview of the Stanford case, visit our blog [High Court Decision set to significantly impact Family Law property settlements](#). In Stanford the High Court highlighted that in every case, the Court must determine, having regard to the parties existing property interests, whether it is just and equitable to make the order.

As you can see, Family Law property settlement can be very complex. There is much to consider about your own personal circumstances prior to making any consideration about the separation of your assets.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.