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LawTalk Blog



Will my “future needs” be considered in my Family Law property settlement?

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Under the *Family Law Act 1975* (Cth) (“the Act”) the [court will make an order](#) for property settlement if it is “just and equitable” to do so. In deciding what order is just and equitable, the court will take into account the following:

1. The assets of the parties held jointly or in each parties sole name;
2. The contributions made by both parties to the relationship, including any financial and non-financial contributions; and
3. Any matters referred to in section 75(2) of the Act known as the “future needs” of the parties.

This blog focuses on the “future needs” which can be taken into account when finalising a [property settlement](#).

What are my “future needs” in relation to Family Law property settlement?

Under section 75(2) of the Act which addresses future needs, the court is required to take 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. 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
8. Any other fact or circumstance which the court considers should be taken into account.

How might “future needs” be assessed – Example 1

- A husband and wife may have four children together under the age of 18 years.
- Since separation the children have been primarily living with the wife.
- The court will consider this as future needs of the wife which is to be taken into account when considering the property settlement between the parties.
- Having the primary care of the children will be assessed as a future need because the wife will be responsible for the day to day care of the children, possible associated expenses and this could result in a reduced income for the wife on account of not being able to work full time.

How might “future needs” be assessed – Example 2

- In this scenario we’re looking at income of each party or the ability to generate future income.
- Assume the husband earns a significantly greater income compared to the wife; this will be considered by the court and property settlement could be adjusted to take this into account.
- Assume the wife has not been employed for the last five years because she has been the primary homemaker and carer of the children. Her ability to regain employment will be considered by the court and any effect that being out of the workforce for the last five years may have on her earning capacity.

If you are going through a property settlement, we recommend that you seek legal advice from a lawyer experienced in [Family Law](#).

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