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LawTalk Blog



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

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Date: Tuesday October 27, 2020

Following separation, it is not uncommon for one party to be in a very different position than the other. This can be due to a range of factors which include differences in income and future earning capacity, the age and health of the parties and whether any party has the primary care of children moving forward. It is therefore understandable for people to worry about their future finances and living circumstances when undertaking a property settlement and when separating from their ex-partner.

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, referred to as the “future needs” of the parties.

What is considered “future needs” in relation to a property settlement?

Under section 75(2) of the Act, 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 and any child or children;
5. The responsibilities of either party to support any other person;
6. The eligibility of either party for a pension, allowance or other government benefit including any superannuation allowance or benefit;
7. A standard of living which in all circumstances is considered reasonable;
8. The duration of the relationship and the extent to which it has affected the earning capacity of the parties;
9. The effect of any order on any creditors ability to recover debt;
10. The need to protect a party who wishes to continue their role as a parent;
11. The financial circumstances relating to cohabitation with any other person;
12. Any child support that a person is paying or is required to pay or may be required to pay in the future;
13. The terms of any financial agreement which is binding on the parties;
14. Any other fact or circumstance which the court considers should be taken into account.

How might “future needs” be assessed in property settlement?

Example 1

- A husband and wife have four children together, under the age of 18 years.
- Since separation, the children have been primarily living with the wife.
- 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 which may limit her employment options and work capacity.
- The wife is likely to receive an adjustment made in her favour for her future needs by virtue of having the primary care of the children.

Example 2

- The husband earns a significantly greater income compared to the wife.
- The wife has not been employed for many years during the relationship because she was the primary homemaker and carer of the children.
- The wife's difference in earning capacity will be considered by the court as would the employment experience of the parties and the impact that being out of the workforce for many years may have on the wife's earning capacity.

Example 3

- The husband is 10 years older than the wife and several years ago, suffered a bad fall at home which has left him with ongoing health issues requiring medical treatment.
- The husband and wife receive similar incomes.
- The wife is healthy and is expecting to be able to continue working in her same or similar role in the future.
- The court will consider the health of the husband, the extent of his medical expenses and the impact this may have on his future employment and earning capacity.

If you are going through a property settlement, we recommend that you seek legal advice from an experienced family lawyer so that you are aware of your rights and entitlements.

[Contact](#) our friendly [family law](#) team at Andersons Solicitors today who will help get the best result for you.

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