

## PROPERTY FAMILY DISPUTE RESOLUTION INFORMATION SHEET

### Property FDR

Separation often involves the division of “property”, which can include bank accounts, houses, superannuation, mortgages as well as other assets and debts. The Toowoomba Family Relationships Centre (FRC) now provides Family Dispute Resolution (FDR) Services to assist separating couples resolve their property issues so they can each move on with their lives independent of each other. Property FDR also provides an opportunity for separating couples to discuss arrangements for the future support of children and other dependents.

### The Benefits of Property FDR

Our Family Dispute Resolution Practitioners (FDRP) are trained to manage the emotion that is often attached to property settlement discussions and our team of FDRPs are committed to providing an environment that supports both parties to have the difficult conversations. Participants will be given the opportunity to listen to each other and to negotiate in good faith towards an outcome that is acceptable to both parties.

The advantages of FDR include the following:

- You have the opportunity to tell your side of the story;
- FDR is private and confidential – discussions cannot be relied upon by either party if your matter later proceeds to Court;
- Decisions can be made in a timely and cost-effective manner;
- You get to make decisions together with the other party rather than giving your decision-making power to a Court; and
- FDR encourages an environment of cooperation, which can foster improved communication between separating parents who are required to continue co-parenting their children into the future.

### Is Property FDR Suitable for Me?

Property FDR is a voluntary process and does not in itself result in legally binding outcomes. However, if agreements are made during FDR, they can be captured in writing so the parties can seek legal advice and cause the agreement to become legally binding.

Property FDR may not be appropriate for everyone or for every dispute. During your first meeting at the FRC (“Individual Property Intake”), the FDRP will undertake an assessment as to whether FDR is an appropriate option for your situation.

### Individual Property Intake Appointment (2 hours):

One of our FDRPs will meet with each of you separately prior to scheduling any Joint FDR Sessions. The purpose of this appointment is to clarify what your expectations are about the range of possible outcomes in the FDR and to explain in detail how the Property FDR process works. During this appointment, the FDRP will assess the suitability of your case for FDR and can answer any questions you may have about the process. This appointment is also an opportunity for you to assess whether you believe FDR will be helpful for your situation and if you are comfortable to proceed with the process.

When one party contacts the FRC independently, this party will participate in the Individual Property Intake Appointment first before the other party is then invited into the process with the consent of the first party.

## Preparation for FDR

Each person will need to compile the necessary documentation to facilitate effective negotiations towards a property settlement. With that in mind you will need to:

- Identify what you each brought to the relationship (i.e. what assets did you have at the start of your relationship/marriage?);
- Identify what assets and liabilities were acquired during the marriage/relationship;
- Identify what assets and liabilities were acquired after separation and/or divorce; and
- Determine an approximate value for each of these assets. Property values, share prices, and bank balances are constantly changing so for the purposes of negotiations, you will simply need values that are approximately accurate.

Both parties will be asked to provide each other with a lists of assets and liabilities as well as copies of bank statements and any other documentation that may be helpful in establishing estimated valuations of assets and debts. It is important to be aware that your participation in FDR requires full and frank disclosure of all the information relevant to either or both of your financial circumstances. This is a requirement for both parties. At the commencement of the Joint FDR Session, you will be asked to sign an 'Agreement to Participate' which confirms your willingness to provide full and frank disclosure of all relevant information.

*The Family Law Act 1975* seeks to achieve a "fair and equitable" distribution of the property of the relationship. Factors that are considered in determining what is "fair and equitable" include the following:

- The contributions that each person made to the acquisition (or disposal) of assets (including financial, non-financial and negative contributions); and
- The needs that each person will have in the future.

We recommend you seek legal and/or financial advice prior to engaging in your Property Joint FDR Session. This information will help you to make informed decisions during the Joint FDR Session(s). It may be of assistance to you to ask your advisor(s) the following questions:

- What is the range of possible outcomes if you were to take this matter to court?
- What is the most likely outcome in your case?
- If your matter proceeds to Court, how long is it likely to take to get a judgment and Court Orders made?
- What would the approximate legal fees be if your matter proceeds to Court and/or final hearing?

## What Happens in Property Joint FDR Sessions?

Property Joint FDR Sessions generally run for three hours and the process may require two to five sessions spread over a number of weeks or months. While the process is tailored to the requirements of each dispute, the following steps describe a typical property settlement mediation:

*Step 1 Identify what is included in the property pool*

*Step 2 Discuss the parties' interests, contributions and future needs*

*Step 3 Negotiate a division of the property pool*

*Step 4 Summarise the agreement in writing*

## The Role of the FDRP in Property Joint FDR Sessions:

- Assist parties to develop a list of the assets and liabilities that are available for distribution;
- Facilitate a constructive discussion about the relevant issues;
- Ensure the process is fair and safe for all parties and the FDRP;
- Assist the parties with mutual decision-making;
- Act impartially and independently; and
- Encourage the parties to obtain independent legal and financial advice where necessary as our FDRPs are not able to provide legal advice.

### **Documenting the Agreement:**

If you reach agreement regarding the division of property, you may wish to have the agreement recorded in writing. If this is the case, the FDRP can draft a Memorandum of Understanding (MOU) following the conclusion of all Joint FDR Sessions. Please note that the MOU is not a legally binding document, however steps can be taken (outside the scope of FRC) to make the terms of the MOU legally binding.

### **How Can we Formalise an Agreement About Property?**

This is an entirely separate step in the property settlement process which takes place after FDR has been concluded at the FRC. It is very important for clients to seek further legal or financial advice before they formalise the agreement into a legally binding document because once legal documents have been finalised, it is generally not possible for parties to change their mind and seek a different property agreement.

In general terms, there are two options for formalising the agreement into a legally binding arrangement:

#### **1. Consent Orders**

While it is not compulsory to formalise your agreement about property, it is recommended that you do so by obtaining Consent Orders under the *Family Law Act 1975*. Having Court Orders can assist you in dealing with organisations such as banks and can help prevent the parties from making claims against each other's property in the future.

For more information on Consent Orders and how to obtain them, we recommend you visit the Family Court website and/or obtain your own independent legal advice.

Important Note: We recommend you obtain legal advice about your particular circumstances prior to signing any final agreement.

#### **2. Financial Agreements**

A Financial Agreement is like a contract between the parties that can deal with how property will be divided if a relationship breaks down. Financial Agreements may also allow for spousal maintenance to be paid if a relationship ends. The Financial Agreement can be made before, during or after a marriage or de facto relationship. Financial Agreements can only be set aside in very limited circumstances, so if you are thinking about making a Financial Agreement, we recommend you obtain independent legal advice.

### **Cost of Property FDR:**

- We are a not-for-profit organisation and our fees are subsidised. Each participant pays for him/herself. Please refer to our Property FDR Services Fees Notice or contact 1300 348 248 if you would like more information about fees.