



# What Is My Partner Entitled To If We Split

## Description

Divorce and [separation](#) are emotionally challenging journeys that often involve several legal and financial considerations. As couples face the difficult decision to part ways, one major question arises: “What is my partner entitled to if we split?” Whether you’re in the midst of a divorce or the early stages of a separation, it’s important to understand your rights to attain property.

In this blog, we’ll examine what is considered property during asset division and ways you and your partner can determine asset division, whether on your own or via the court.

## The difference between separation and divorce in Australia

While they might mean the same thing colloquially, separation and divorce have different meanings under the eyes of the law. Divorce involves legally separating from your partner and ending your marriage, while [separation](#) doesn’t involve any legal process — in most cases, it means living under separate roofs with minimal communication.

Under Australian law, if you and your partner intend to get divorced, you must be separated for at least 12 months before you can apply for divorce. If you and your partner have been married for only two years, you will also be required to attend marriage counselling in an attempt to reconcile. Only once you and your partner have completed the counselling can you apply for divorce.

However, regardless of the status of your separation, if you and your partner, whether you are married or in a de facto relationship, fully intend to separate, you will need to discuss asset division. Let’s explore how assets and property are defined in Australia.

## Defining property and understanding your rights

Property, in regard to separation, involves all assets and debts owed by both parties, regardless of whose name is on it. In this case, this can include:

- The family home
- Cars and other vehicles
- Cash
- Savings
- Investments, such as stocks and shares
- Insurance policies
- Superannuation
- Inheritances
- Jewellery
- Credit cards, home loans and personal loans
- Businesses

If you and your partner are married and do intend to divorce after the separation period, you do not need to wait for this to begin dividing your assets. In fact, it might be better to discuss it with your partner as soon as possible.

## Property or financial agreement — dividing your assets with your partner

Whether you're determining any parenting arrangements or dividing your assets, separating couples are highly encouraged to work together to amicably divide their assets without the court's involvement. Litigation is emotionally intensive and expensive, not to mention lengthy, and could deliver a result you both don't agree with — crafting a property agreement between you and your partner can help avoid this.

A property or financial agreement is an informal document outlining how your assets will be divided post-separation. These can be made without a lawyer, although they are not legally binding. Using a property agreement will give you and your partner more of a say over how your property will be divided and help you negotiate favourable terms for both parties.

So when you ask yourself, "what is my partner entitled to if we split up?" Regardless of whether you are married or in a de facto relationship, both partners have an equitable right to any property shared, regardless of whose name is on the asset. But given that you and your partner may have your own opinions of who is entitled to what, this can make asset division all the more difficult.

If you and your partner cannot agree on how your assets should be split, you can ask the court to decide for you with a property order.

## Property orders — what are they and how do they work

A property order refers to a legal document issued by a court that outlines how the assets and properties of a married or de facto couple will be divided between them. This order specifies which

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spouse gets ownership or use of specific properties and assets. The court will use its own processes to determine what is a fair and equitable division. For instance, it may consider:

- **Financial and non-financial contributions** — The court will take into account how you and your partner contributed to the relationship. This can include your salary, savings, home-making, child-rearing and other forms of non-financial support.
- **Indirect financial contributions** — Aside from your salary, the court will also consider indirect financial contributions, such as gifts and inheritances you may have received during the course of your marriage.
- **Your assets and debts** — From any businesses you own to the debts you've acquired along the way, the court will address how these will be managed post-separation.
- **Future needs of each partner** — The court will also evaluate the difference in earning capacity and financial resources between the spouses. It will also consider the recipient spouse's financial needs, especially if they have custody of minor children and face limited employment opportunities.

## Know where you stand during your separation with AFLAS

If you've decided to split up with your partner, "what am I entitled to?" is a common question you may find yourself asking. During this time, it's important to have access to reliable and practical resources to help you along the way. [Contact us](#) today to learn more about how we can help.

### DISCLAIMER:

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