

Step by Step Guide for Small Property Pool Cases in Court

It is important you obtain legal advice from an experienced Family Lawyer before you apply to the Court.

1 SEEK LEGAL ADVICE

If you think you and your ex may be able to negotiate a property settlement out of Court you should consider doing this first. The Family Law team at McInnes Wilson Lawyers can provide you advice on dispute resolution options and effective negotiation techniques. We can also advise you as to your entitlement to a property settlement so you can make an informed offer to your ex.

If your ex has been unwilling to negotiate or impossible, Court may be your only option. We can provide you advice on what Orders you should ask the Court order in your Application.

To commence proceedings in the Court for a property settlement you will need to file:

2 PREPARE AND FILE YOUR APPLICATION

- **Initiating Application** – which sets out the result you want to achieve in Court, that is the Orders you seek on an interim (now) and final basis.
- An example of an interim Order could be that your ex provide you with historical bank statements. You may request this if you have a good reason to suspect your ex has hidden funds. A final Order could be that a property held in joint names be sold.
- **Financial Summary** – which sets out your past and present financial circumstances as well as circumstances surrounding the care of any children during the relationship.
- This form is specific to the small property pool list and is simpler than an Affidavit which you otherwise would need to complete if your matter was not in the small property pool list.
- **Financial Statement** – which provides the Court with an accurate picture of your current financial position.

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WHAT HAPPENS WHEN YOUR MATTER IS IN COURT?

Once your documents are filed in the Court you will be assigned a date for a first Hearing, which is the first time you appear before a Registrar. Normally matters are listed within 4 – 6 weeks of filing.

Within 7 days of filing you will need to serve your filed documents on your ex, either through their lawyer if the lawyer will accept the documents or by way of personal service.

Prior to the first Hearing the Registrar may make case management directions that:

- Documents be filed, including your ex file a Response (if not already) within a specified time;
- You and your ex exchange disclosure of financial documents within a specified time frame; and
- You and your ex liaise (if safe to do so) regarding the property pool and your preferred dispute resolution process.

Even if the above directions are not made by the Registrar before the first Court date you and your ex will need to exchange taxation and superannuation documents and bank statements. Once your matter is in Court you and your ex will have an ongoing legal obligation to exchange disclosure.

We can provide you with further advice about the disclosure process and what disclosure you should request from your ex so that you can put your best case forward at Court. If your ex refuses to provide you with their financial documents and/or is hiding assets we can issue subpoenas to various institutions including banks and the Police on your behalf to obtain records. You may need to obtain legal assistance for this as issuing subpoenas can be a complicated process.

Once your ex has filed a Response to your Application (which is required within 28 days of them being served with your Application) you should consider what Orders they request the Court make. The Family Law team at McInnes Wilson Lawyers can review your ex's Response and the Orders they seek to provide you advice on what we consider the Registrar may do at Court. This will ensure you are best prepared for the first Court date.

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4 ATTEND COURT

You will usually be required to attend Court at least once. The Registrar will focus on case management, including assisting you and your ex reach agreement about the property pool and preparing your matter for dispute resolution.

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You and your ex may reach agreement at Court. If not, provided disclosure has been exchanged and valuations undertaken (if necessary) the Registrar will likely arrange for a conciliation conference to take place. This is a confidential process run by the Registrar to assist you and your ex reach agreement as to your property settlement. The Family Law team at McInnes Wilson Lawyers can provide you advice on the conciliation conference process and/or attend with you at the conference to help you get your fair share.

If you and your ex cannot reach agreement through dispute resolution you will need to attend further Court hearings. The Registrar will then arrange for a Trial where a Judge makes a final determination.