

# PAGE PROVAN

*family and fertility lawyers*

## PROPERTY SETTLEMENT – THE FIVE STEP PROCESS

The court in most cases will follow the following five step process in determining each party's property settlement entitlement:

1. To determine whether or not it is “just and equitable” to make any adjustment to the parties' interests in the property available for division.
2. To identify and value all the property that is available for division. This includes all assets, liabilities and superannuation of each party.
3. To consider the financial and non-financial, both direct and indirect, contributions made by and on behalf of each of you to the acquisition, conservation or improvement of property. These contributions include homemaker and parenting contributions. The Court will generally assign a percentage to each party's contributions, for example, 50% / 50%.
4. To consider the future needs of each party, including:
  - (a) Whether either party has the care of a child of the relationship;
  - (b) The age and state of health of each party;
  - (c) The income, property and financial resources of each party;
  - (d) The physical and mental capacity of each party for appropriate gainful employment;
  - (e) The disparity in the income earning capacities of each party;
  - (f) Instances of family and/or domestic violence;
  - (g) Commitments that are necessary for each party to support themselves or any other person;

If one party has greater future needs than the other, the court will generally make an adjustment in their favour to the percentage division nominated at step 3, for example to 55% / 45%;

5. To consider whether, in all the circumstances of the case, the proposed order is “just and equitable”.