

Property Joint FDR Session Preparation Guide

It is now time for you to ensure you are prepared and ready for your Property Joint FDR Session (mediation).

You will have already gathered some helpful information about FDR from attending your Property Intake appointment, however you will find this information sheet particularly helpful in guiding your final preparations. Please take the time to read through the information and consider utilising the tips and ideas set out in this guide.

We understand that some clients may feel unsure or worried as their mediation approaches. Please be reassured that our Family Dispute Resolution Practitioners (FDRPs) are committed to ensuring all participants feel safe and

supported during the mediation and that the equity of our service is maintained at all times. This means that all participants should have the opportunity to respectfully voice any concerns they have regarding the separation of their assets and liabilities and put forward ideas about how they believe the property pool should be divided.

There are steps that you need to take as well to ensure you are prepared and able to achieve the best possible outcome of your mediation. It is important to remember that we focus on providing the opportunity for a safe & supported discussion with the other party, however it is for you and the other party to determine the outcome of the mediation.

Preparation for the Joint FDR Session

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 any 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 legal 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.

For the purposes of negotiating your property settlement, we encourage you to be prepared to discuss the following matters in the Joint FDR Session:

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

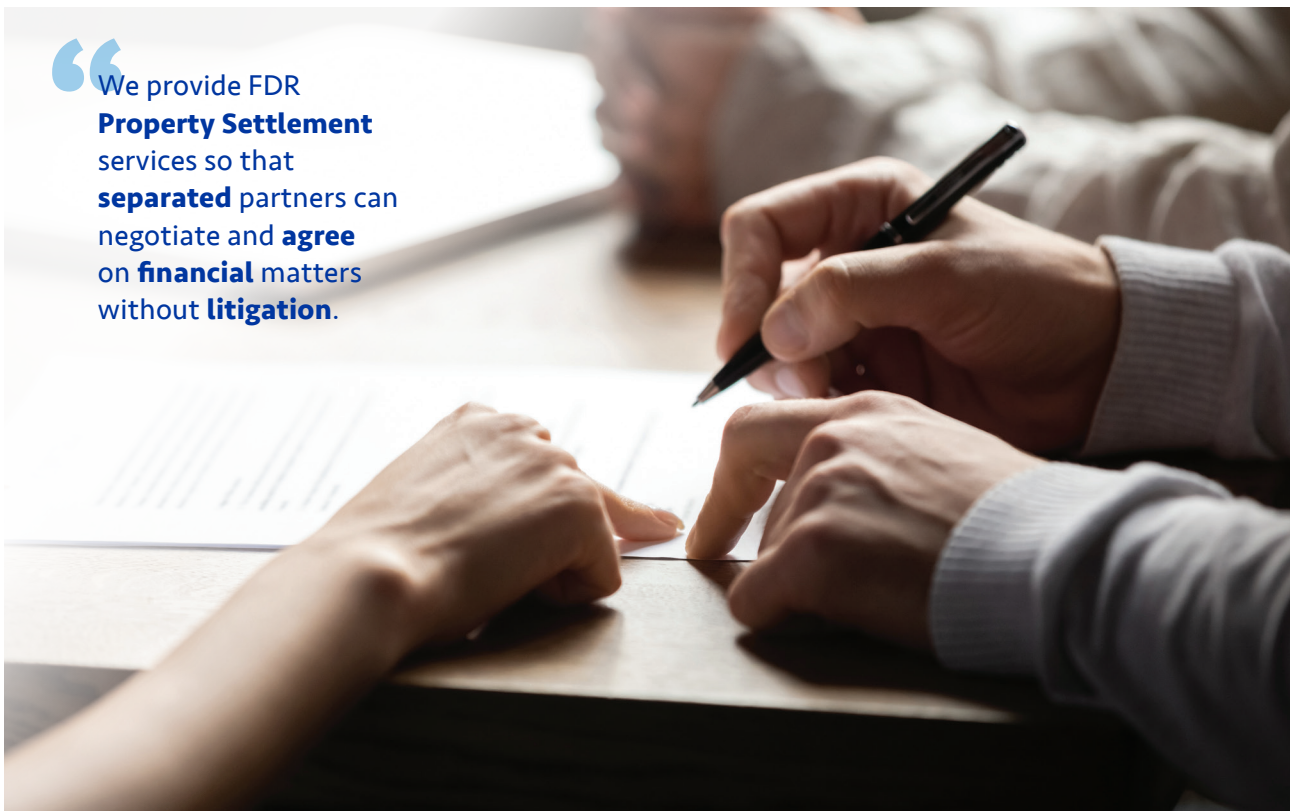
Preparation for the Joint FDR Session (Continued...)

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

- » What factors are most relevant in determining how our assets and liabilities should be divided?
- » What is the range of possible outcomes I could expect if our property division is decided by a Court? This is usually expressed as a percentage of the property pool.
- » What is the most likely outcome in my case if the matter is decided by a Court?
- » If my 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 my matter proceeds to Court and/or final hearing?

“

We provide FDR **Property Settlement** services so that **separated** partners can negotiate and **agree** on **financial** matters without **litigation**.



What happens in Property Joint FDR Sessions?

Property Joint FDR Sessions generally run for three hours and the process may require two or more 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 process:

1

Formalities – reviewing and signing the Agreement to Participate in Property FDR

2

Opening Statements – each party will be invited to make a brief statement about what they each hope to achieve in mediation

3

Identify the assets and liabilities which currently exist and their value (generally called “the property pool”)

4

Discuss the parties’ interests, contributions and future needs

5

Explore options for the division of the property pool and negotiate an outcome which is acceptable to both parties

6

Summarise the agreement in writing

You can request a private meeting with your FDRP at any time during the mediation. This may be helpful if you are becoming upset, if you have a question you would like to ask the FDRP in private or if you think you may benefit from some advice about how to raise a difficult point of discussion. Your FDRP may also call private meetings during the mediation. If your FDRP has a private meeting with one party, the other party will be offered the same opportunity. The FDRP does not share what is discussed during these private sessions with the other party.

It is important to remember that nothing which is raised or discussed during the FDR Joint Session can be quoted or referred to by either party as evidence if Court proceedings are subsequently initiated by either party. This gives both parties the opportunity to speak openly with each other without fearing legal implications of “saying the wrong thing”. For further details about confidentiality and inadmissibility, we refer you to the Property FDR Information Sheet which was provided to you at the beginning of this process.

The FDRP's Role in Joint FDR Sessions

- » Assist parties to develop a list of the assets and liabilities that are available for division;
- » Facilitate a constructive discussion about the relevant issues;
- » Ensure the process is equitable 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 advice.

Documenting the agreement

If you reach agreement regarding the division of property, your agreement will be documented in an informal 'Heads of Agreement'. This is a good faith agreement only, and steps

will need to be taken after the FDR process concludes if the parties wish to formalise their property settlement.

HOW CAN WE FORMALISE AN AGREEMENT ABOUT PROPERTY?

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.

While it is not compulsory to formalise your agreement about property, it is recommended that you do so. Having a legally binding document can assist you in dealing with organisations such as banks and formally documenting the agreement generally prevents the parties from making claims against each other's property in the future. You may also be required to produce formal documentation of your property settlement if your agreement involves superannuation splitting or if you intend to obtain an exemption from stamp duty on the transfer of a property.

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

- 1. Consent Orders** - An Application for Consent Orders can be made to the Family Court of Australia. For more information on Consent Orders and how to obtain them, we recommend you visit the Family Court website and obtain your own independent legal advice.
- 2. Financial Agreements** - A Financial Agreement is like a contract between the parties that can deal with how property will be divided following separation. These documents are drafted by solicitors in accordance with the technical requirements which are set out in the Family Law Act 1975.

Property FDR clients are encouraged to seek advice from a solicitor about which option is most appropriate in their circumstances.

COST OF PROPERTY FDR

We are a not-for-profit organisation and our fees are subsidised. Where fees apply, each participant pays for him/herself. Please refer to our CatholicCare Fees Notice or contact 1300 348 248 if you would like more information about fees.

TIPS FOR AN EFFECTIVE MEDIATION

- » If your proposed settlement options involve third parties such as banks, relatives or business partners, we strongly recommend you consult the relevant party/s prior to the mediation and if possible, ask that these people be available to contact by phone during the mediation.
- » Avoid waiting until mediation to reveal new information or significant changes as it can result in strong emotions and be difficult to negotiate. People need time to process new information, so mediation is rarely the best time to introduce these matters.
- » Know your alternatives if you do not reach agreement in mediation (getting legal advice before the mediation can help you to know this).
- » Think about the possible implications to you and/ or to your children if things do not get resolved, eg the time, expense and emotional toll of Court proceedings.
- » Respectful communication is essential for FDR to be effective. Criticism of the other party will not lead to constructive exploration of the issues in dispute.
- » You must give the other party the opportunity to freely express their point of view without interruption, which can be difficult if you are not emotionally prepared.
- » You are likely to feel some strong emotions during the Joint FDR Session. It is helpful to anticipate this and think carefully about how you are going to manage your strong emotions or reactions. What strategies might you use if you feel yourself getting emotionally triggered? You might consider using deep breathing techniques, silently count to 10, pour a drink of water or asking for a break. We encourage you to work with an independent counsellor/ psychologist prior to mediation to ensure you have some effective strategies that work for you.
- » Be prepared to explain why you believe your proposed option/outcome is best for your family and/or why it is important to you. Simply stating what you want to achieve will not be adequate.
- » Know the difference between NEGOTIATING (a process by which compromise or agreement is reached while avoiding argument and dispute), and BEING POSITIONAL (a fixed position where you will not consider other options).
- » Consider what it might be like to be in the other party' shoes.
- » Avoid bringing blame into the mediation room – FDR is about the future, not the past.
- » Do you need to apologise to the other party for something you have said or done? FDR is a valuable opportunity to take responsibility for past behaviour & provide an undertaking for how things might be different in the future.

What Else You Should Know About FDR at the Toowoomba FRC

INADMISSIBILITY

Section 10J of the Family Law Act provides that communications made in FDR are not admissible in any Court or proceedings, in any jurisdiction. This means that what the parties say or do in the Joint FDR Session cannot be quoted or referred to by either party as evidence if Court proceedings are subsequently initiated by either party. This gives participants the opportunity to speak openly with each other without fearing legal implications of “saying the wrong thing”. Clients should be aware however, that this protection does not extend to disclosures or admissions regarding child abuse or risk of child abuse.

The Toowoomba FRC is committed to keeping all aspects of the FDR process confidential, including the Intake & assessment records. However, clients should be aware that the information recorded in the Intake & assessment process may, in very limited circumstances, be sought via subpoena for production to the Court. We confirm that CatholicCare Social Services may object to the issue of a subpoena or the inspection of some or all of the documentation to be produced. We will only object should we consider it appropriate to do so having regard to our duty of care for our clients & our staff. If an objection to a subpoena is raised, the Court may inspect the documents to determine whether they should be provided to the party who issued the subpoena. If you have questions in relation to confidentiality or admissibility in FDR, we strongly encourage you to seek independent legal advice prior to your Intake being scheduled.

SAFETY

Client and staff safety is of utmost importance to us. Accordingly, if you have current safety concerns for yourself or your children that you have not already advised us of, we ask that you telephone our office to discuss your concerns with one of our FDRPs as soon as possible.

Similarly, if during the course of the mediation, you become concerned about the safety of yourself, your children or any other person, please request a private meeting with your FDRP and report your concerns with as much detail as possible.

LEGAL ADVICE

Our FDRPs are not able to provide legal advice at any time before, during or after your engagement with our service. You are however, able to request a break at any time during the mediation to telephone your lawyer for advice or information.

SUPPORT PEOPLE

Please note that the attendance of all support people (including a lawyer) requires the approval of the FDRP prior to the Joint FDR Session being booked.