



GUARDIAN FUNDING

MATRIMONIAL SETTLEMENT SOLUTIONS

SAMPLE APPLICATION PACKAGE



Relevant Information For A Guardian Funding Application Re Property Settlement

- Nature and substance of the negotiations and/or proceedings.
- If proceedings have commenced, what stage have those proceedings reached.
- What is the anticipated time-frame for:
 - The next Court event; and
 - Final hearing.
- Have any offers been made and, if so, please particularise.
- If a Conciliation Conference has been conducted:
 - What offers were then exchanged, if any; and
 - What offers have been exchanged in accordance with Rule 10.06 of the Family Law Rules.
- In order to make a proper assessment as to:
 - Likely outcome of the case; and/or
 - The value of any asset (including superannuation) or the extent of any liability,

is further disclosure and/or valuation(s) required, and if so, please provide some particulars.
- Are you aware of any other matters which might:
 - Have the effect of reducing the applicant's likely entitlement to an amount less than your advice as set out in Section B on page 4 of the Application; or
 - Otherwise affect the final outcome of the case.
- In terms of the amount of funding sought by the applicant on page 5 of the Application, what amount:
 - Represents costs and outlays already incurred;
 - Represents costs and outlays to be incurred and, if so, how much for each and to what point in the negotiations/proceedings do you anticipate that will take the Applicant.
- How is it proposed that the Applicant will repay the Guardian Loan and interest.



GUARDIAN FUNDING

**SECTION B: TO BE COMPLETED
BY THE APPLICANT'S LAWYER**

Property Matters

Please provide some outline in relation to the property to be divided between the parties? (Add annexure if helpful)

See Annexure 'A'

What property did each party have at commencement of the relationship? (Add annexure if helpful)

See Annexure 'B'

What contributions have each of the parties made during the relationship? (Add annexure if helpful)

See Annexure 'C'

What are the relevant future factors? (Add annexure if helpful)

See Annexure 'D'

Other matters relevant to the matter/outcome (Add annexure if helpful)

See Annexure 'E'

Issues to be Resolved

Having regard to the above instructions and other relevant instructions received from my client, my advice as to the likely outcome/ range of property settlement is as follows (Add annexure if helpful)

See Annexure 'F'

(Please attach any further documentation which could be of possible assistance in assessing this loan application, including the Applicant's likely ability to repay the Guardian Loan)

Signature of Applicant's Lawyer

THE PROPERTY OF THE PARTIES: [JOHN BROWN and MARY BROWN]

Personal Property

No.	Item	Husband's Value	Wife's Value
1. (a)	Matrimonial home at 1305 Smith Street, Camberwell, Victoria (registered in joint names)	2,750,000	2,250,000
(b)	Subject to Mortgage to ANZ Bank	(650,000)	(650,000)
2.	Household contents, furniture and appliances	75,000	35,000
3.	Artwork and antiques remaining in matrimonial home	250,000	55,000
4. (a)	Investment unit, Hastings Street, Noosa, Queensland (registered in joint names) – income producing	1,250,000	1,250,000
(b)	Subject to Mortgage to ANZ Bank	(750,000)	(750,000)
5.	Household contents, furniture and appliances	20,000	20,000
6. (a)	Husband's share portfolio managed by J.B. Were (as per current share statements)	515,000	515,000
(b)	Subject to Margin Loan with BT Financial Services	(400,000)	(400,000)
7.	Husband's ANZ Bank account	35,000	35,000
8.	Wife's ANZ Bank account	9,000	9,000
9.	Husband's other bank account(s) (further disclosure required)	Nil	Not known
10.	The husband contends the Noosa unit will need to be sold to achieve a settlement and CGT will need to be paid	(Not known)	(Not known)

Corporate Property

No.	Item	Husband's Value	Wife's Value
11. (a)	XXX Nominees Pty Ltd as Trustee for the Brown Family Unit Trust (husband and wife are the two directors and all shares are owned by ABC Pty Ltd as Trustee for the Brown Family Superannuation Fund, which fund also owns all the units in the Brown Family Unit Trust). The assets owned by XXX Nominees Pty Ltd comprise three commercial properties at Frankston, Victoria.	1,300,000	1,900,000
(b)	Subject to Mortgage to ANZ Bank registered over three commercial properties	(900,000)	(Not known)
(c)	The husband contends that whilst it is his intention to initially retain the three Frankston	(110,000)	(Not known)

commercial properties in order to “facilitate” a settlement with the wife, it is likely and inevitable that they will shortly thereafter have to be sold in order to reduce his debt and accordingly, CGT should be taken into account.

12. (a)	AAA Investments Pty Ltd as Trustee for the AAA Trust (husband is the sole director and shareholder of the company and the appointor of the Trust). The only asset of the Trust is the commercial property at 1365 White Street, St. Kilda, from where the husband conducts his financial planning business. The property is yet to be valued.	720,000	790,000
(b)	Subject to Mortgage over the commercial property at St. Kilda	(500,000)	(500,000)
13.	JB Pty Ltd as Trustee for the JB Service Discretionary Trust. This company acts as a service company for the husband’s financial planning business. It employs the staff and leases the computers and other office plant and equipment.	Nil	Nil
14.	John Brown Financial and Asset Service. This is the husband’s business. The husband practises as a licensed financial adviser on his own behalf. He employs a staff of six, being three other financial advisers and three admin staff. He has conducted his business at St. Kilda for 13 years.	Nil	Not known
15.	Outstanding staff superannuation and tax payable by JB Pty Ltd for the years ending 2005 and 2006, estimate:	(95,000)	(Not known)
16. (a)	Husband’s 2004 Mercedes CLK200 in the name of JB Pty Ltd	62,000	80,000
(b)	Subject to Lease debt to Mercedes Finance	(98,000)	(Not known)
17. (a)	Wife’s 2005 BMW X3 motor vehicle registered in the name of JB Pty Ltd	85,000	70,000
(b)	Subject to Lease debt to BMW Finance	(95,000)	(95,000)

Superannuation

No.	Item	Husband’s Value	Wife’s Value
18.	Bank account with ANZ, Melbourne	27,000	27,000
19.	Shares:		
	- BHP Biliton	\$13,000	
	- ANZ Bank	\$8,000	
	- WMC	<u>\$22,000</u>	
		\$43,000	43,000

20.	Artwork in husband's office	10,000	25,000
21.	In July 2005, the husband withdrew the sum of \$75,000 from the ANZ superannuation account. He applied \$15,000 towards a trip for him and his girlfriend to the south of France; \$20,000 to assist his brother; and \$40,000 to meet personal tax, land tax and outstanding rates on all the properties. A question arises as to whether the superannuation fund remains a complying fund, and what taxes, fines and penalties will flow.	(Not known)	(Not known)
	[Contingent liability]		
	*	<hr/> \$3,648,000	<hr/> \$4,709,000

- * These 2 x total amounts are both subject to:
- potential CGT on sale of Noosa property;
 - contingent (disputed) CGT liability in relation to the 3 x commercial properties at Frankston;
 - valuations in relation to:
 - household contents;
 - artwork; and
 - the business, John Brown Financial and Asset Services.

NOTES:

In relation to the above property and liabilities:

- (a) The parties have agreed to jointly retain a single expert witness to value:
- the household contents, furniture and appliances in the matrimonial home at Camberwell;
 - the artwork and antiques in the matrimonial home.
- (b) The parties have agreed to jointly retain a single expert witness to value the business, John Brown Financial and Asset Services.
- (c) The husband will not agree to join with the wife in retaining a single expert witness to value the shares of the JB Services Discretionary Trust as he maintains that it has no value. The wife has elected to reserve her rights in relation to that matter for the time being.
- (d) The wife is awaiting further disclosure before she can make any further assessment or take any further steps in relation to any other bank accounts, if any, in the husband's name. She suspects other accounts, as the deposits presently made to the husband's ANZ personal account have ceased, with no explanation provided by the husband other than that the company cannot afford to keep paying those drawings.
- (e) The husband and the wife have agreed to jointly retain a single expert witness to determine and report on:
- the likely CGT, if any, in relation to the sale of the Noosa unit; and
 - the likely CGT, if any, in relation to the sale of each of the 3 Frankston commercial properties.
- (f) Notwithstanding whatever CGT would be payable in the event of the sale of the 3 Frankston commercial properties, the wife does not admit that such potential liability should be taken into account as she does not accept that the husband is genuine in asserting that they or any of them will be sold.
- (g) The wife contends that there should be notionally "added back" into the pool of property and assets:
- the sum of \$60,000 withdrawn by the husband from the Superannuation Fund; and
 - any taxes, fines or penalties, if any, arising from the husband's withdrawal of funds from the Superannuation Fund.
- (h) Whilst the Superannuation Fund includes items 18, 19 and 20 under that heading on page 5 above, it also includes the units in the Brown Family Unit Trust (item 11) which owns the three commercial properties at Frankston.

**WHAT PROPERTY DID EACH PARTY HAVE
AT THE COMMENCEMENT OF THE RELATIONSHIP – (JUNE 1994)**

1. THE HUSBAND

No.	Item	Husband's Value	Wife's Value
1. (a)	The three commercial properties at Frankston (the properties were transferred to XXX Nominees Pty Ltd in 1997)	500,000	400,000
(b)	Subject to Mortgage to ANZ Bank in husband's name	(100,000)	(200,000)
2.	The business, John Brown Financial and Asset Services	Nil	Nil
3. (a)	The husband's 1990 Mercedes 300CE motor vehicle	60,000	30,000
(b)	Subject to Lease debt to Citicorp	(20,000)	(Not known)
4. (a)	A block of land at Rye	220,000	220,000
(b)	Subject to Mortgage to ANZ Bank	(110,000)	(200,000)
5.	Superannuation with AMP	110,000	50,000
		<hr/> \$660,000	<hr/> \$300,000

2. THE WIFE

No.	Item	Husband's Value	Wife's Value
6.	Joint interest in home at Black Rock with her former husband (sold 2 years after these parties commenced residing together)	300,000	300,000
7.	Superannuation with Norwich Union	Not known	25,000
8.	Savings (inheritance received by wife from her late father approximately one year prior to commencement of relationship)	200,000	200,000
9.	Wife's 1992 Holden Commodore motor vehicle	20,000	22,000
		<hr/> \$520,000	<hr/> \$545,000

The whole of the monies referred to in items 6 and 8 above were applied towards the purchase of the parties' current matrimonial home at Camberwell, Victoria.

**WHAT CONTRIBUTIONS HAVE EACH OF THE PARTIES MADE
DURING THE RELATIONSHIP**

THE HUSBAND:

- (a) The husband has worked and earned excellent income throughout the entirety of the relationship.
- (b) In 1999 he received from the estate of his late parents the sum of \$350,000, the whole of which he applied towards the reduction of debt.
- (c) The husband has fulfilled the role of parent for the parties' daughter, now 11 years of age and step-father to the wife's son (from an earlier relationship) Brad (aged 19 years).

THE WIFE:

- (a) The wife worked part time from the commencement of the relationship until 1995. She then worked part time in the husband's business doing some reception and bookkeeping work. The wife has not worked for income from 1999 to the date hereof.
- (b) The wife has at all times been homemaker and care provider for the family. Whilst the wife's son (Brad) now 19 years of age, has at all relevant times been a child of the household and financially supported by the household, the wife has also acted as homemaker and care provider for the husband's two daughters, each of whom would often stay in the Brown household for extended periods of time, as a consequence of their troubled relationship with their mother.
- (c) Brad's biological father provided child support at a reasonable level and paid half of Brad's private school fees.

FURTHER:

Throughout the relationship, neither party has received:

- any inheritance;
- any financial windfalls;
- any personal injury or other awards or compensation;
- any significant gifts or loans from family or friends.

WHAT ARE THE RELEVANT FUTURE FACTORS

THE HUSBAND:

- The husband is 55 years of age. He is in good health.
- The husband's income is not less than \$250,000 per annum.
- The husband's career is secure. He is self-employed, well established with a good network of clients and referrals.
- The husband has formed a new de facto relationship. His partner is employed with Citibank as a finance approvals officer. She has no children and she earns approximately \$45,000 per annum. Whilst she resides with the husband in a de facto relationship, she has her own home at Tullamarine, Victoria, which she rents out. The value of that home and the extent of the mortgage are not known.
- The husband is paying reasonable financial support for the parties' daughter, including her private school fees. It is likely that will continue.

THE WIFE:

- The wife is 51 years of age. She is in good health.
- The wife has no formal qualifications. She has not worked for income (outside the husband's business) since 1995. Her employment prospects are minimal. Even if the wife does obtain employment, it will be basic and menial. The income earning disparity between the parties will be vast.
- The wife has not re-partnered.
- By agreement between the husband and the wife, their daughter (11 years) will live with the wife and they have agreed that she will spend liberal and regular time with the husband.

OTHER MATTERS RELEVANT TO THE MATTER/OUTCOME

THE HUSBAND:

- (a) The husband's new de facto partner is nearing the completion of her matrimonial and property proceedings. It is likely that she will receive a settlement in excess of \$2m.
- (b) The husband has been under pressure for some time to open up partnership opportunities in his business to at least two of his employees. The wife believes that he will do so and receive sufficient monies to enable him to retain the 3 Frankston commercial properties and thereby avoid the payment of CGT, which he otherwise argues should be brought into account in this settlement. She acknowledges that there may be some CGT issues for the husband if he was to sell part of this business to potential new partners.

THE WIFE:

- (a) Her mother is very ill and her passing is imminent. The wife is an only child and likely she will receive an estate in excess of approximately \$1m.

**MY ADVICE TO MY CLIENT AS TO A LIKELY OUTCOME/RANGE
OF PROPERTY SETTLEMENT IS AS FOLLOWS**

1. Until the above single expert reports/valuations have been received, it is not possible to be precise about the total or net value of the parties' property, liabilities and resources.
2. Based on the information currently available and either agreed or verified, the net pool of property is not less than \$3,000,000. Subject to receipt of the valuation reports, I expect that the net pool will be found to be larger. My advice at this stage, however, is based upon the net pool of \$3,000,000.
3. I have advised my client, Mrs Brown, that if this matter is not otherwise settled by agreement, then she can expect to receive between 55-65% of the net property of the parties. Close to 60% would be a likely outcome. I have advised her that the matrimonial home at Camberwell should be sold. My advice is that she should sell the home and thereby receive more by way of cash which she could then apply towards a more modest home and otherwise though, some income-producing asset(s)/venture(s).