Valuing the Family Home in Family Law Matters

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Family Law Property Settlement

The Family Law Act 1975 (Cth) gives the Family Court power to divide property in the event of separation and relationship breakdown. In doing so, the Family Court adheres to a four step process as follows:

- Identify and value the property, liabilities and financial resources;
- Assess the contributions;
- Assess any relevant future needs; and
- Consider the effect of those findings and determine what order would be just and equitable.

Valuation of Real Estate

Quite often your family or matrimonial home is your most significant asset. Accordingly, there is often some argument during step 1 over what value to assign the property. As a general rule property will be valued as at the time of the final hearing. The Court will value all properties currently owned by you and/or your former spouse.

Firstly, the parties are able to negotiate and agree on the value of the property. An advantage of this avenue is that it allows the former couple to decide the value of the property themselves.

If the parties cannot reach an agreement, it is common for the parties to agree to appoint a single Valuer to value the property in question. Valuations should be distinguished from appraisals. While appraisals can provide a guide to the value of the property, a valuation is undertaken by a valuer with specialised knowledge in accordance with professional valuation standards. As opposed to an appraisal, valuations are independent. Valuations of real estate are generally based on the market value according to what a hypothetical prudent purchaser would be willing to pay. The land will be valued for it’s highest and best use, including the potential for the land to be developed. The cost of the valuation is generally split 50/50 between the parties.

Shadow Valuers

If you are unhappy with the value assigned, one option is to seek to engage a shadow expert. Shadow experts are appointed by one party and can critique the report of the single expert. However, the Family Law Rules and Federal Circuit Court Rules govern how and whether evidence from a shadow expert may be adduced.

Contact Information

For further information or if you require assistance please contact our Family Law team here or email info@matthewsfolbigg.com.au