

So, you and your ex have agreed on property settlement. What now?



Many separated couples prefer to settle property division amicably, and do so through a variety of ways. One of the benefits of negotiation is that you can be creative in the way you negotiate and in the terms of the agreement itself. The fact is that for most couples this is the quickest and cheapest way to resolve the matter and, especially if you have children, is important in maintaining an effective parenting relationship in the future.

However, even if you have reached an agreement, and even if you have implemented it between you, that may not be the end of the matter. Married couples have 1 year from the date of divorce and de facto couples have 2 years from the date of separation to initiate proceedings in a family law court for property settlement or spousal maintenance. Especially in the case of married couples, who may not get divorced as soon as they are eligible to apply, this means that there is a matter of years where the other party could seek a further adjustment of property. In some cases the informal property settlement may be enough to close off any further action, but it is not guaranteed.

You have some options to formalise a property settlement. That is by way of Court Orders or by a Financial Agreement.

Court Orders are obtained by completing a form entitled 'Application for Consent Orders'. This document sets out information about your respective

financial circumstances including the assets and liabilities of the relationship and the income and financial resources of each of you. The document also requires information in respect of contributions you each made during the relationship and about your present circumstances and future needs.

Attached to the Application for Consent Orders is a Minute of Orders which sets out terms and mechanics of the property settlement. These documents are submitted to the Family Court with a filing fee. The Application and Minute are then considered by a Registrar in Chambers. If they are satisfied that the proposed settlement is "just and equitable", they make Orders in Chambers and disseminate them to the parties. Orders are then legally enforceable by a Court exercising family law jurisdiction, and can only be set aside in limited circumstances.

A Financial Agreement is a document executed by both parties which sets out the basis upon which the settlement is negotiated and the terms of the settlement itself. Each party must each obtain independent legal advice prior to entering into a Financial Agreement. If one party does not comply with a term of a financial agreement, a Court is able to enforce it, but first the Court must find that the Financial Agreement was validly made.

In each case there might be reasons that one form of formalisation is preferable to the other, and you would need to discuss this with your lawyer to ascertain which is better suited to your needs.

Contact Us

If you have any questions about which approach is best for you, feel free to contact any of our family lawyers on (03) 8621 2888.

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